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Publications



First Session
Thirty-fifth Parliament, 1994-95

Première session de la
trente-cinquième législature, 1994-1995

SENATE OF CANADA

SÉNAT DU CANADA

*Proceedings of the Special
Senate Committee on*

*Délibérations du comité
spécial du Sénat sur les*

Pearson Airport Agreements

Accords de l'aéroport Pearson

Chairman:
The Honourable FINLAY MACDONALD

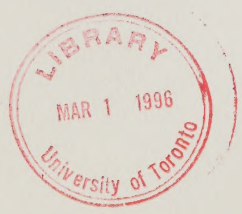
Président:
L'honorable FINLAY MACDONALD

Tuesday, November 29, 1995

Le mardi 29 novembre 1995

Issue No. 31

Fascicule n° 31



INCLUDING:
THE THIRD REPORT OF
THE COMMITTEE ENTITLED: REPORT OF
THE SENATE SPECIAL COMMITTEE ON
THE PEARSON AIRPORT AGREEMENTS

Y COMPRIS :
LE TROISIÈME RAPPORT DU COMITÉ
INTITULÉ : RAPPORT DU COMITÉ SPÉCIAL
DU SÉNAT SUR LES ACCORDS
DE L'AÉROPORT PEARSON



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THE SPECIAL SENATE COMMITTEE ON
THE PEARSON AIRPORT AGREEMENTS

The Honourable Finlay MacDonald, *Chairman*

The Honourable Michael Kirby, *Deputy Chairman*

and

The Honourable Senators:

Bryden	* Lynch-Staunton
* Fairbairn, P.C. (or Graham)	(or Berntson)
Jessiman	Stewart
LeBreton	Tkachuk

* *Ex Officio Members*

(Quorum 4)

LE COMITÉ SPÉCIAL DU SÉNAT SUR
LES ACCORDS DE L'AÉROPORT PEARSON

Président: L'honorable Finlay MacDonald

Vice-président: L'honorable Michael Kirby

et

Les honorables sénateurs:

Bryden	* Lynch-Staunton
* Fairbairn, c.p. (ou Graham)	(ou Berntson)
Jessiman	Stewart
LeBreton	Tkachuk

* *Membres d'office*

(Quorum 4)

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ORDER OF REFERENCE

Extract from the *Minutes of Proceedings of the Senate*, dated May 4, 1995:

That a special committee of the Senate be appointed to examine and report upon all matters concerning the policies and negotiations leading up to, and including, the agreements respecting the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport and the circumstances relating to the cancellation thereof;

That seven Senators, nominated by the Committee of Selection no later than two weeks after adoption of this motion act as members of the special committee, and that three members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses under oath, to report from time to time and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee have the power to sit during adjournments of the Senate;

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee;

That the committee have power to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings; and

That the committee present its final report to the Senate no later than one year following the striking of the committee.

The question being put on the motion, as modified, it was adopted.

ORDRE DE RENVOI

Extrait des *Procès-verbaux du Sénat* du 4 mai 1995:

Qu'un comité spécial du Sénat soit créé pour étudier tous les aspects inhérents aux politiques et aux négociations ayant mené aux accords relatifs au réaménagement et à l'exploitation des aéroports 1 et 2 de l'aéroport international Lester B. Pearson, de même que les circonstances ayant entouré l'annulation des accords en question, ainsi qu'à faire rapport à ce sujet;

Que sept sénateurs, dont trois constituent un quorum, soient nommés par le comité de sélection au plus tard deux semaines après l'adoption de la présente motion pour faire partie de ce comité spécial;

Que le comité ait le pouvoir de faire comparaître des personnes et produire des documents, d'entendre des témoins sous serment, de faire rapport de temps à autre et de faire imprimer au jour le jour documents et témoignages, selon les instructions du comité;

Que le comité soit autorisé à siéger pendant les ajournements du Sénat;

Que le comité soit autorisé à retenir les services des spécialistes et du personnel de soutien et autres qu'il juge nécessaire;

Que le comité soit habilité à autoriser, s'il le juge opportun, la radiodiffusion et la télédiffusion de la totalité ou d'une partie de ses délibérations; et

Que le comité présente son rapport final au Sénat au plus tard un an après sa création.

La motion, telle que modifiée, mise aux voix, est adoptée.

MINUTES OF PROCEEDINGS

OTTAWA, Tuesday, November 29, 1995
(31)

[Text]

The Special Committee of the Senate on the Pearson Airport Agreements met *in camera* this day at 3:05 p.m., the Chair, the Honourable Senator MacDonald (*Halifax*), presiding.

Members of the Committee present: The Honourable Senators Kirby, Lynch-Staunton, MacDonald (*Halifax*) and Tkachuk. (4)

Other Senators present: The Honourable Senators Berntson, Hervieux-Payette, P.C. and Stewart (3).

It was agreed that:

- (i) The report of the Pearson Airport Agreement be adopted with a dissenting opinion and other appendices;
- (ii) The date for tabling the report in the Senate be set tentatively for Wednesday, December 13, 1995; and
- (iii) 7,500 copies of the English version of the report and 2,000 copies of the French version be printed.

At 3:20 p.m., the Committee adjourned *sine die*.

ATTEST:

Le greffier du comité,

Gary O'Brien

Clerk of the Committee

PROCÈS-VERBAL

OTTAWA, le mardi 29 novembre 1995
(31)

[Traduction]

Le comité spécial du Sénat sur les accords de l'aéroport Pearson se réunit aujourd'hui, à 15 h 05, à huis clos, sous la présidence de l'honorable sénateur MacDonald (*Halifax*) (*président*).

Membres du comité présents: Les honorables sénateurs Kirby, Lynch-Staunton, MacDonald (*Halifax*) et Tkachuk. (4)

Autres sénateurs présents: Les honorables sénateurs Berntson, Hervieux-Payette, c.p. et Stewart. (3)

Il est convenu que:

- i) le rapport sur les accords de l'aéroport Pearson, accompagné d'un rapport de dissidence et d'autres annexes, est adopté;
- ii) la date de dépôt du rapport au Sénat est provisoirement fixée au mercredi 13 décembre 1995; et
- iii) 7 500 exemplaires de la version anglaise du rapport et 2 000 exemplaires de la version française seront imprimés.

À 15 h 20, le comité s'ajourne *sine die*.

ATTESTÉ:

REPORT OF THE COMMITTEE

WEDNESDAY, December 13, 1995

The Special Committee of the Senate on the Pearson Airport Agreements has the honour to present its

THIRD REPORT

Your Committee which was authorized by the Senate on May 4, 1995 to examine and report upon all matters concerning the policies and negotiations leading up to, and including, the agreements respecting the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport and the circumstances relating to the cancellation thereof, has, in obedience to its Order of Reference, examined the said subject and now tables its report with the following observations.

Although your Committee is satisfied that all essential elements of this inquiry have been produced and subjected to public scrutiny, it reserves the right to hold further hearings if additional relevant evidence emerges. It has therefore adjourned *sine die*.

Your Committee notes that while it was granted a budget of \$298,000, it has completed its study under budget. A full accounting of expenses will be given at a later time pursuant to Rule 105.

Respectfully submitted,

Le président,

FINLAY MACDONALD

Chairman

RAPPORT DU COMITÉ

Le MERCREDI 13 décembre 1995

Le comité spécial du Sénat sur les accords de l'aéroport Pearson a l'honneur de présenter son

TROISIÈME RAPPORT

Votre comité, autorisé par le Sénat le 4 mai 1995 à étudier tous les aspects inhérents aux politiques et aux négociations ayant mené aux accords relatifs au réaménagement et à l'exploitation des aéroports 1 et 2 de l'aéroport international Lester B. Pearson, de même que les circonstances ayant entouré l'annulation des accords en question, ainsi qu'à faire rapport à ce sujet, a, conformément à son ordre de renvoi, examiné ledit sujet et dépose maintenant son rapport avec les observations suivantes.

Bien qu'il soit satisfait que tous les éléments essentiels de l'enquête aient été produits et soumis à l'examen du public, le comité se réserve le droit de tenir d'autres audiences dans le cas où surviendraient des données additionnelles pertinentes. Cela étant, le comité s'ajourne *sine die*.

Votre comité ajoute qu'un budget de 298 000 \$ lui a été attribué et qu'il a terminé l'étude sans utiliser pleinement son budget. Un bilan complet des dépenses sera déposé plus tard conformément à l'article 105 du Règlement.

Respectueusement soumis,

**Report of the Senate Special Committee on
The Pearson Airport Agreements**

December 1995

Published under the authority of the
Senate of Canada
December 1995

Ce document est disponible en français

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Membership

The Honourable Finlay MacDonald, *Chairman*
The Honourable Michael Kirby, *Deputy Chairman*

The Honourable Senators:

John Bryden
Céline Hervieux-Payette
Duncan Jessiman
Marjory LeBreton
David Tkachuk

* Joyce Fairbairn P.C. (or Alasdair B. Graham)
* John Lynch-Staunton (or Eric A. Berntson)

Original Members agreed to by Motion of the Senate:

The Honourable Senators:

Bryden, Fairbairn P.C. (or Graham) Hervieux-Payette, Jessiman, Kirby, LeBreton, Lynch-Staunton (or Eric A. Berntson), MacDonald (Halifax), Tkachuk

Other Senators who participated in the work of the Committee:

The Honourable Senators:

Adams, Bosa, Carstairs, Doyle, Gigantés, Grafstein, Hébert, Kinsella, Losier-Cool, Poulin, Prud'homme, Robertson, Stewart, Sylvain.

* *Ex officio members*

Order of Reference

Extract from the *Minutes of Proceedings of the Senate*, dated May 4, 1995:

“THAT a special committee of the Senate be appointed to examine and report upon all matters concerning the policies and negotiations leading up to, and including, the agreements respecting the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport and the circumstances relating to the cancellation thereof;

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THAT the committee present its final report to the Senate no later than one year following the striking of the committee.

The question being put on the motion, as modified, it was adopted.”

Paul C. Bélisle
Clerk of the Senate

The sworn testimony of the witnesses who appeared before us speaks more strongly of the legitimacy of the process, the benefits of the Pearson contract and the tragedy of its cancellation than this Report can ever do.

Report of the Special Senate Committee on
The Pearson Airport Agreements

The majority of the members of the Special Committee inquiring into the contracts to redevelop Pearson International Airport are unanimous in concluding that these contracts were in the public interest of the people of Canada, and should not have been cancelled by Prime Minister Chrétien. This Report of The Special Committee of the Senate of Canada, which inquired into contracts to redevelop and operate two of the three passenger terminals at Lester B. Pearson International Airport, depicts how rash rhetoric in a federal election campaign became the basis for a rush to judgement.

It was a rush to judgement so flawed it may cost Canadian taxpayers in the millions of dollars. It impugned the reputations of private business people, public servants and politicians. It caused serious financial loss to individuals and companies that had concluded a fair and good deal with the Government of Canada that was in the interest of all Canadians. It has delayed much needed redevelopment of a vital part of Canada's transportation infrastructure, thereby putting the country at an increasing disadvantage in the competitive field of international transportation and thereby jeopardizing its potential economic benefits.

During the 1993 election, Opposition Leader Jean Chrétien said that, if elected, he would have the Pearson deal reviewed and, if necessary, would cancel it. At the time, he was knowingly exploiting innuendo and hyperbole which seeped into the political campaign. His position contrasted with his party's attitude while in Opposition, of either ignoring the redevelopment issue or being privately supportive. Once elected, Mr. Chrétien appointed the Hon. Robert Nixon, a former leader of the Ontario Liberals, to carry out a 30-day review of the development project. Mr. Nixon reported to the Government on November 29th, 1993 and recommended cancellation of the agreements.

Chairman's Foreword

An independent judicial inquiry into the Pearson redevelopment project would have been preferable. But all appeals for this type of review fell on deaf ears. Mr. Nixon's review was based on three weeks of interviews with a week to write the report. The Special Committee learned that Mr. Nixon interviewed 66 persons. At first blush, this sounded impressive, until it was learned that 23 of them were members of the Metro Toronto Liberal Caucus. Mr. Nixon's interviews were conducted in private. The Committee could not obtain details of the interviews from Mr. Nixon, or those who worked with him, as few notes were taken.

The Special Committee heard from all the major private sector participants involved in the redevelopment project, and from former Ministers and the senior public servants who acted on the Government's behalf. Of the 65 witnesses heard under oath by the Special Committee, only 18 had been interviewed by Mr. Nixon. He failed to interview many key Pearson participants from the public and private sectors. Some of his interviews were, on the evidence of the interviewees, so brief as to be cursory or focused on just one or two aspects of the Pearson contract. Faced with the Nixon report, highly damaging statements unworthy of a Minister of the Crown and proposed legislation to prevent the consortiums involved in the Pearson project to sue for recovery of their losses, this Special Committee started hearings last July 11th. It met 30 times.

A parliamentary committee, by definition, is divided along partisan lines. This will undoubtedly be reflected in the different conclusions that Liberal and Conservative senators will draw. Nevertheless, the great achievement of this Special Committee is that it heard more than 130 hours of testimony given under oath by 65 witnesses, including those in the public and private sector most knowledgeable on all of the issues, all of the negotiations and all of the decisions made about Pearson. The facts are on the public record in abundant detail.

This inquiry into the Pearson contracts by the Senate of Canada opened the windows on the deal and became the vehicle for open and public accountability something which the Chrétien Government had not expected and tried to avoid. Despite delays in gaining access to the written record, the withholding of documents and parts of documents, we are satisfied that all essential parts of the record have been subjected to public scrutiny.

The Reasons for the Redevelopment Project

Pearson International ranks among the world's top international airports. It is a vital hub for domestic air travel and for Canada's two largest airlines. More than 800 aircraft from over 60 airlines land and take off every day. Fifty-seven thousand passengers are processed daily at Pearson - more than a third of the Canadian total. More than 40% of all Canadian air cargo passes through Pearson. It is indispensable to Canada's international competitiveness. The existence of a first class airport will attract industry, commerce and

Chairman's Foreword

jobs to Toronto and to Canada. An inferior facility will send investment and jobs to Cleveland, to Pittsburgh, to Detroit, to Chicago.

Successive Federal governments had shied away from the reality that Pearson was the obvious hub for the national air transportation system. They shied away from that reality and because of regional policy, and political baggage from the past, the commitment needed to achieve Pearson's national and international potential was not made until 1989, when the Minister of Transport announced a strategy for developing airports in Southern Ontario. Finally in 1989, the decision was made to upgrade Pearson International as Canada's national and international hub airport.

Problems at Pearson were numerous. Runway capacity was inadequate for existing and projected traffic. There were insufficient air traffic controllers. The parking garage was a problem. Terminals One and Two, which had been designed to handle 12 million passengers a year, were processing 20 million. The number of gates at T2 was inadequate. T1 was described as "chaotic" and a "slum". Regardless of what was done about the runways, the terminals had to be redeveloped without delay.

The government had four options:

- 1) Redevelop the traditional way - that is, spending public money - a difficult choice given the federal government's financial and economic constraints.
- 2) Impose user fees on each passenger using Pearson - not only an unpopular option, but one which would have damaged Pearson's competitiveness.
- 3) Transfer the airport to a local airport authority. Formation of the local authority was - at the time - impeded by political squabbling and was simply not an attainable alternative.
- 4) Lease the two terminals to private sector investors who would redesign, rebuild and operate them, while the federal government retained authority over the management of the overall airport.

The fourth option offered a timely resolution to Pearson's most pressing problems, with no requirement for government capital expenditure, but with continued ownership and regulatory oversight by the Crown. Moreover, a successful precedent to this option had been established with Terminal 3; the federal government had leased the land on which a private sector developer had designed, financed, built and, since 1991, operated Terminal 3 - an enormous undertaking involving \$580 million of private investment. This experience was used in putting together the work plan for the T1/T2 process.

Chairman's Foreword

For these reasons the Government selected the option of leasing Terminals 1 and 2 to qualified private companies, with a strict timetable for their redevelopment and rules for their management in the public interest.

The Process

In March 1992, the Government was ready to announce the request for proposals to redevelop the two terminals. The Request For Proposals had been drafted with assistance from outside consultants over a 17-month period, during which the Government had requested input from interested parties. The evaluation criteria and process were drawn up. Officials from the Departments of Transport and Justice and the National Transportation Agency were involved. The independent investment firm Richardson Greenshields provided professional financial counsel. Price Waterhouse was put in charge of security procedures for the bidding process, and reviewed evaluation criteria and methodology. Raymond Chabot Martin & Paré, the auditing firm, oversaw the process to verify that the terms of reference had been respected. Deloitte & Touche were retained as advisors to evaluate fair rates of return for the developer and the Government.

The Government's evaluation committee worked through July and August of 1992 comparing the bids proposed by Paxport Inc. and the Claridge Group. The evaluation committee submitted its unanimous report to the Deputy Minister of Transport in October and the draft report of the audit group was submitted shortly thereafter. The Paxport proposal was judged the Best Overall Acceptable Proposal. It scored highest on business, development and operational plans.

In December 1992, the government announced that negotiations would begin with Paxport to enter into a contract to redevelop and operate Terminals 1 and 2. Shortly thereafter, Paxport and Claridge came together into a single company, known as T1/T2 Limited Partnership, of which Pearson Development Corporation (PDC) was the managing partner. The rationale for this merger was that business synergies existed between the two developers since the Claridge Group was already the owner-operator of Terminal Three. The Paxport proposal was the more advantageous to the Crown. The merger with Claridge gave the Government added financial reassurance.

Negotiations proceeded through the early months of 1993. By June a non-binding Letter of Intent was signed on the federal government's behalf by the Deputy Minister of Transport and PDC. **By early July, the Government and PDC were so deeply committed to the redevelopment contract that they agreed that October 7th, 1993 would be the closing date. On August 27th, 1993, following Treasury Board approval, an Order-in-Council authorized the Minister of Transport to enter into lease and development agreements with T1/T2 Limited Partnership.**

Chairman's Foreword

Our evidence confirms that with that authorization both the government and the partnership had bound each other to agreements which could not be altered much less cancelled other than by mutual consent. Otherwise, an action in damages against the offending party would certainly have followed.

From August 27 until October 7th, the only activity on the Pearson file was by public servants. There were no further changes requiring approval from Treasury Board, nor was there any ministerial involvement or intervention.

As part of documentation provided to Treasury Board, Deloitte & Touche concluded that the value of the ground lease, between \$800 million and \$900 million in net present value, represented fair market value to the Crown. The rate of return to be achieved by the developer was judged reasonable.

Meanwhile, two events occurred that contributed to the subsequent controversy surrounding the proposed redevelopment project.

New Factors

First there was an international economic recession. Air traffic, which had been increasing rapidly in the 1980's and peaked in 1991, declined sharply. By 1992, there was surplus capacity at Pearson International. As a result, the Government heard advice, mostly from people who were opposed to the terminal redevelopment project, that they should hold off, revisit the plan, and maybe do some interim repairs at the airport.

The Government believed the traffic would increase once the recession ended, and then exceed the record levels of 1991. All available evidence, including projections by Transport Canada and the International Air Transport Association pointed in this direction. The Government was right. With the end of the recession, traffic volumes began returning rapidly to the 1991 highs. Unfortunately the airport facilities were not modernized when traffic volumes were low enough to facilitate this. The private investor also understood the cyclical nature of the airline business and was prepared to proceed. The redevelopment will now have to occur under conditions of congestion. Even if development starts now, it will take at least another seven years to bring Pearson up to world-class standards.

The second event was the formation of a new government under Prime Minister Kim Campbell. The Minister of Transport who had held office under the former Administration since 1991 was reappointed to that post by Ms. Campbell. On 8 September the Prime Minister obtained dissolution of Parliament for an election to be held on 25 October 1993. Still working towards an October 7th closing for the deal, lawyers for both parties drew up the final legal documents in September. Material documents were signed by the parties on October 3rd. and 4th, and put into escrow until October 7th. This was the closing date, established three months earlier.

Chairman's Foreword

During that election campaign, highly partisan rhetoric amplified in the media provoked public opposition to the Pearson redevelopment contract, even though the transaction had survived an elaborate and thorough bidding procedure.

The Birth of an Election Issue

Encouraged by politicians and interest groups, the media suddenly started advancing claims of cronyism and patronage concerning the Pearson deal. It made for banner headlines. Oddly enough, no mention was made of the fact that Claridge, which eventually ended up with two-thirds ownership in the T1/T2 Partnership Ltd., had very strong Liberal connections. On October 5th, Mr. Chrétien made the project an election issue, stating that the contract would be reviewed and, if necessary, cancelled, should he become Prime Minister. On October 7th, Prime Minister Campbell was asked to confirm that the documents should be released from escrow, thus allowing the long-awaited redevelopment to proceed.

There was no doubt as to the government's legal and constitutional right to proceed. Moreover, Prime Minister Campbell had been assured in writing, several weeks previously, by some of Canada's most senior public servants that the selection of the developer had followed an "entirely transparent" competitive process. And, in a memorandum to her that is now part of the public record, these officials added that "we can assure you that officials have reviewed the file and can confirm that due process has been followed at every stage." In addition, refusal by the government would have had significant legal consequences for the Crown. Based on these factors the Government proceeded.

Wholly Unsubstantiated Findings

Following the election, but before his Ministry was sworn in, Mr. Chrétien commissioned the Nixon review which was delivered on schedule and in a document now proven to be riddled with false allegations and innuendo.

Contrary to the outside professional advice given to the previous government, Mr. Nixon found the revenue stream to the Crown "far from overwhelming" and stated that the rate of return to the developer "could well be viewed as excessive."

Mr. Nixon attacked former Prime Minister Campbell for allowing the closing to proceed. He characterized the contract as "inadequate" arrived at in a "flawed process and under the shadow of possible political manipulation." He referred to the "suspicion" that patronage played a major role in the selection of Paxport. He claimed that the activity of lobbyists exceeded "permissible norms." And he spoke of a "perception" that political staff had been interested in the transaction to a highly unusual extent. Not one word of evidence or documentation was advanced by Mr. Nixon in support of these allegations. Nonetheless, Mr. Nixon recommended cancellation of the contract, which Mr. Chrétien announced on

Chairman's Foreword

December 3rd, four days after receiving the report. We find it incredible that no serious consideration was given to alternative options, such as renegotiating the agreements, which would have been far less costly to the people of Canada than the situation in which we find ourselves because of the cancellation.

Since 1993, allegations and insinuations of bid rigging, patronage, undue political interference and excessive lobbying have sullied the reputations of former Prime Ministers, Ministers, politicians, government officials, lobbyists and entrepreneurs involved in the Pearson process. Who was to blame for these gross distortions of truth? The only government report on the subject is Mr. Nixon's report, with its wholly unsubstantiated allegations.

Conclusions Based on the Facts

Upon hearing all the evidence, the majority reached four key conclusions:

1) The Government's Decision to Proceed was Sound

Policy decisions are always open to debate. However, the evidence before the Committee leaves no doubt that, given the urgent need to redevelop Pearson and the limited alternatives available to the Government, the decision to lease Terminals 1 and 2 to highly experienced and competent private developers was sound.

2) The Process was Fair and Impartial

Twenty-six present and former public servants as well as all the outside professional advisors retained by the Government, testified unequivocally that the process was flawless. The evidence overwhelmingly indicates that there was no undue political interference and the influence of lobbyists was negligible.

3) The Contracts Were in the Best Interest of the Canadian Taxpayer

The benefits of the Pearson agreements to the Canadian public were considerable. \$96 million dollars would be invested immediately, and a further \$647 million dollars was to follow in stages over the life of the project. All of this would have been done at no cost to the taxpayer. In addition, the Government would receive millions in lease payments. Thousands of jobs, directly or indirectly, would have been created. An internationally-recognized Canadian participant in the airport development and operations business would have been established. Meanwhile, the rate of return to developers was within reasonable norms. The public servants who worked over many years to find a workable solution to the Pearson mess had every right to be proud of the results they achieved.

Chairman's Foreword

4) Election Campaign Issues vs. Sound Public Policy

All political decision-makers, of whatever party, should recognize an essential lesson from the Pearson experience. Emotions stemming from electoral campaigns are a seriously inadequate basis for responsibly addressing the complexities of sound public policy-making. Furthermore, where campaign commitments are made to review major public policy decisions of a previous Government, this should be done with rigorous detachment from any partisan emotions which may have precipitated the review.

Some Final Thoughts

The need for an inquiry into the cancellation of the Pearson agreements was heightened by serious accusations which have been made during the past two years by the Hon. Douglas Young, the current Minister of Transport. His malicious insinuations, directed at just about everyone involved with these agreements, including former prime ministers and ministers, politicians, government officials, developers and lobbyists among others, demanded an investigation.

The Minister's allegations have been based on a report conclusively demonstrated, by our inquiry, to be riddled with innuendo, unfounded hearsay and groundless suspicions. Yet these statements have done unconscionable harm to the reputations of innocent Canadians. We hope that our report provides these individuals with a measure of vindication, thus addressing the personal side of the cancellation decision as well as its disastrous impact on the public interest.

This inquiry has been long and exhausting. From time to time we have had to express our frustration at the delays in gaining access to the written record, and to the withholding of documents and parts of documents under the cloak of the *Access to Information Act*. In the end, we are satisfied that all essential parts of the record have been produced and subjected to public scrutiny. That record, and the sworn testimony of the witnesses who appeared before us, speak more strongly of the legitimacy of the process, the benefits of the Pearson contract and the tragedy of its cancellation, than this Report can ever do.

Finlay MacDonald
Chairman

Introduction

**“Any deal that was produced was going to
be a good deal or there’d be no deal”**

David Broadbent
Government negotiator

On 4 May 1995, the Senate of Canada established a special committee for the purpose of inquiring broadly into the origins, content and subsequent cancellation of the October 1993 agreements between the Government of Canada and Pearson Development Corporation relating to the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport.

This report presents the findings and conclusions of the majority of Committee members, based on the testimony under oath of more than sixty individuals including those who played major roles in the decision to redevelop the terminals and in developing the agreements. Our hearings commenced in mid-July and continued intensively until early November 1995. We heard evidence from the two Ministers of Transport responsible for the major decisions during the development of the deal, an extensive cross-section of the government officials involved (including all who had exercised senior managerial responsibilities), representatives of the developers, lobbyists, and academics.

The hearings concluded with a lengthy series of meetings with Mr. Robert Nixon, whose report had provided the basis for the present government's cancellation of the agreements, his legal advisor, Mr. Stephen Goudge, and his financial advisor, Mr. Allan Crosbie.

We would like to express our deep appreciation to all who participated in our hearings, in many cases altering their summer plans to do so. We recognize that our inquiry placed senior public servants, in particular, in a potentially awkward position. They must continue to work directly with the present government and retain its trust, in spite of having been obliged to provide evidence refuting most of that government's justifications for cancelling the agreements. We commend the careful professionalism of their analysis and advice during our hearings, which testifies strongly to their capacity to serve governments of all political stripes.

We are also extremely grateful for the valuable contributions made to our work by the Senate Committees Branch, our Counsel and our personal staffs. As well, we thank our research staff from the Library of Parliament, who among other duties provided excellent assistance in drafting this report.

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Just the Facts

In general, our inquiry has had to respond to two fundamental challenges. The first of these, no doubt apparent to those who watched the daily broadcasts of our televised proceedings, was to determine the facts of an immensely complex process that started over five years ago. The second, equally basic to our mission, was to formulate reasonable standards according to which these facts could be evaluated.

The difficulty of distinguishing what actually happened from rumour, hearsay, groundless suspicion and political opportunism, has faced our inquiry from beginning to end. The task had several dimensions.

First, there was the challenge of sorting through some 45,000 pages, including public service briefing papers, memoranda, notes to file and other documents, along with similar papers from developers and other witnesses. We strove to avoid attributing sinister meanings to words that had often been casually or hastily chosen in draft documents that may have been rewritten before receiving other than narrowly internal use, or not used at all. For example, the word "pressure," which periodically appeared on papers circulated by officials was found to have a prosaic explanation: projects require deadlines, and deadlines make people feel pressed from time to time. As far as we can determine, this reality led to the rumours of "intense political pressure" that dogged the Pearson agreements from the day they were signed.

A second fact-finding challenge arose from the government process for ensuring that cabinet confidences, advice to ministers, solicitor-client advice or other protected information was not revealed in any of the documents provided to our inquiry. This posed a number of on-going problems with, we believe, serious implications for the potential effectiveness of parliamentary committees. Detailed discussion of our specific experience, in this regard, the problems that arose, and our proposed solutions is provided in Part III of this report.

Our lack of access to certain government documents was a particular source of frustration. One such document is a Treasury Board submission, claimed to contain comments critical of the Pearson agreements, which was either leaked or inadvertently provided both to Mr. Nixon and at least one journalist. For reasons set out at the appropriate places below, however, we are satisfied that our failure to gain access to this document has not deprived us of information needed to reach reliable conclusions. Indeed, we took the precaution of recalling several public service witnesses for a hearing on 23 October 1995 during which we raised the concerns which have been attributed to the Treasury Board submission and received detailed, and in our view conclusive, refutations. Lack of access to such documents poses a general threat, however, to the credibility of parliamentary committees, especially those inquiring into concerns founded on suspicions and speculations directly reflecting a lack of complete information.

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A third challenge resulted from the nature of our Committee. Composed according to the rules applying to Senate committees, our Committee had a majority of members from the Progressive Conservative Party and a minority from the Liberal Party; the sharply contrasting majority and minority convictions about the Pearson agreements was apparent virtually from the outset of our hearings. Our challenge was to find ways to work effectively together, despite strongly felt disagreements, and all members can take credit for the Committee's success in this respect. During the hearings, the party sides worked somewhat like the prosecution and defence teams in a judicial proceeding. The complementary lines of questioning developed by each side were fully explored with the various witnesses and, we believe, the body of resulting evidence is closer to being complete than had questions come from a single source.

The Challenge of Reasonable Standards

The second dimension of our task has been to develop reasonable standards for assessing the Pearson agreements and the process that produced them. In our view (supported in detail in Chapter VI), the decision to cancel the agreements suffered fatally from inattention to such standards.

A central requirement of reasonable standards for the Pearson deal is that they be broadly applicable to similar agreements, and the government processes that produce them. It would not be reasonable, for example, to reject the Pearson agreements because of the presence of lobbyists, unless there was demonstrable wrong-doing or illicit influence. Files in the federal Registry of Lobbyists demonstrate that lobbying activity increases in direct proportion to the size of projects. Its level for the Pearson process was normal for a project of this size.

It would not be reasonable to reject the Pearson agreements merely because there were ties of acquaintance, friendship or shared political affiliation between important political or public service decision-makers and developers. The fact that decision-makers know each other or share golf club memberships does not represent a sinister force undermining the health of our political system.

Finally, it would not be reasonable to reject the Pearson agreements because an official who worked on developing them felt uncomfortable or disagreed with government decisions, or felt some pressure to complete the job. These are normal reactions, reflecting the realities that people can differ, in good faith, over issues of public policy and that public officials, like employees in other organizations, may not welcome change.

Throughout our inquiry we applied, we believe consistently, four standards to the Pearson agreements and the process that produced them. In our view, they are standards generally recognized by those who played a role in the process and reflect traditional norms

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for public life in Canada. They are also the standards to which, for issues other than the Pearson agreements, the current government continues to adhere.

The first and most important standard is ethical: in relation to the Pearson Airport terminals and their redevelopment, did any public official knowingly set aside what he or she believed to be the public interest in order to favour a private interest, at any point during the process or before its inception? If there is evidence of ethical failure in the Pearson agreements, then it should be not merely corrected but the persons responsible should be appropriately punished. On the other hand, if there is no such evidence the punishment of those involved is an injustice which should itself be corrected.

The second standard has to do with the integrity of the process. The essential question is: did political pressures, time constraints or other circumstances, put people in a position that prevented them from performing their duties satisfactorily, or respecting the decision-making authorities and other controls implied in the public service concept of due process? If deficiencies are identified in the integrity of the process, the appropriate response depends on precisely what they are. A knowing attempt to prevent people from performing their duties, for example, might merit a punitive response similar to that reserved for ethical failures, in addition to action to correct the damage. An unintended breach of integrity, such as attempting to complete a task with inadequate staff or material resources, would merit primarily the correction of the damage, either by cancelling the deal or undertaking to renegotiate inadequate aspects.

If no deficiencies are identified at this level, it may still be possible to criticize the Pearson agreements on other grounds; however, the inference that the process which produced them was somehow compromised must be abandoned.

The third standard has to do with public policy. It has to be recognized that people may, in good faith, differ vigorously over what is required by the public interest in any specific circumstance. An incoming government has the right to review its predecessor's actions and amend them, if they conflict significantly with the public interest as conceived by the new government.

Alternatively, at this level, a review might accept the broad public policy thrust of the agreements. In the case of the Pearson deal, this would mean endorsing public sector-private sector partnerships involving the long-term leasing of airport terminals to development consortiums for modernization and operation, with the government retaining responsibility for certain public interests such as safety. In the case of the Pearson agreements, consideration at the level of public policy requires a disciplined review of their provisions and the problems they addressed, without a surreptitious diversion of attention back to suspicions about people or the process. Responsible consideration should also balance the harm done by any identified deficiencies against the costs of remedying them.

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Depending on the conclusion, a review at this level could legitimately have recommended cancellation, renegotiation or retention as concluded in 1993.

The fourth and final standard has to do with the details. The essential question is: are there individual elements or provisions in the Pearson agreements that it is reasonable to believe could be improved significantly? A responsible review here, must involve more than merely singling out certain aspects of the deal for renegotiation. It must take account of the fact that the Pearson agreements reflect a complex trade-off among multiple issues on which the negotiating positions of the Crown and the developers differed. A responsible course of action, if defects were found, might be to initiate talks with the developers in order to explore the likelihood of further gains on certain specific items, or a reshaped pattern of trade-offs. The logic governing this level is unlikely to lead to a justification for wholesale cancellation. It would either identify specific renegotiation issues, or recommend retention of the existing agreements.

The alternative to applying reasonable standards to the Pearson process is the application of arbitrary standards, or private convictions, or fleeting emotional states, or a combination of these.

We believe that in the case of the Pearson agreements, this happened in Canada. In our broader politics, however, we retain the norms of a democratic society: the rule of law and the rights of the individual. These norms provide the basis for a reasonable assessment of the Pearson Agreements. They are also at stake in what the government does as it addresses this issue.

Our Report

This report is our contribution to the resolution of the problems created by the cancellation of the Pearson agreements. It provides recommendations based on a detailed examination of the process and policy decisions that led to the agreements and a careful examination of the reasons for which they were cancelled.

Chapter I, entitled "The Policy Framework," explores the public policy basis for the Pearson agreements. Central attention is given to the government's airport management policy, released in 1987 and refined in 1989 and 1990, which focused on the creation of local authorities to manage major airports, and on increasing the market responsiveness of all airports. The 1989 decision to develop Pearson Airport to maximum capacity, and the experiment in public sector-private sector partnership initiated in 1986 which resulted in the construction of Terminal 3, are also considered.

Chapter II, entitled "The Decision to Redevelop," examines the 1990 decision to modernize Terminals 1 and 2 by means of a competitive process which would invite private sector developers to propose innovative solutions. This decision, announced on 17 October

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1990, grew out of the need for terminal redevelopment at Pearson, which was widely seen to be urgent during the late 1980s, and the public policy thrusts discussed in Chapter I.

Chapter III, entitled "Developing the Request For Proposals," examines the various decisions involved in the development of the Request for Proposals (RFP) document. This document was released on 16 March 1992, and provided developers with the government's project objectives and specific requirements, along with the standards to be used in evaluating proposals and a deadline for their submission.

Chapter IV, entitled "Selecting a Proposal," covers the period between the release of the Request For Proposals and 7 December 1992, when the government announced the result of its evaluation of proposals. During this period, the Department received competing proposals from three consortiums: Paxport, headed by the Matthews Group; Airport Terminals Development Group (ATDG), controlled by Bronfman interests; and Morrison Hershfield, which did not meet deposit and other RFP requirements and was not considered. The proposals that met submission qualifications were then evaluated by means of a highly formal process applied involving application of the criteria set out in the Request For Proposals. This evaluation found that both the Paxport and ATDG proposals were acceptable, but that the Paxport proposal was superior in four of the six rating categories, making it the best overall acceptable proposal. A recommendation to this effect was accepted by the Minister and Cabinet, and publicly announced on 7 December 1992.

Chapter V, entitled "Negotiating the Agreements," covers the period between 7 December 1992 and the concluding of the terminal redevelopment deal on its scheduled closing date of 7 October 1993. During the first phase of this period, as the source of the best overall acceptable proposal, Paxport had first chance at satisfying the government that formal negotiations could begin. Discussions relating to a series of concerns identified during the evaluation process were superseded, however, when Paxport and ATDG created a joint venture. It, in turn, was able to demonstrate to the government's satisfaction that it could obtain the financing needed to carry out the development proposed in the best overall acceptable proposal. During the second phase of this period, the detailed terms of the various agreements involved in the deal were negotiated between the government and Pearson Development Corporation, the joint venture created by Paxport and ATDG. During a third phase, in the fall of 1993, the contractual documents setting out the legal terms of the agreements were finalized and, on October 7, the deal was closed.

In Chapter VI, entitled "Cancellation," we discuss the appointment of Mr. Robert Nixon, following the 25 October election, to review the Pearson deal. After noting the circumstances relating to this appointment, we examine the process and apparent methodology followed by his review during the period between 27 October 1993, when the Prime Minister requested his assistance, and 29 November 1993, when his findings and recommendation were submitted. We then turn to these, examining them in relation to the findings and conclusions established by our own investigation, as outlined in earlier chapters.

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In this light, we assess the decision to cancel the Pearson agreements, announced by the Prime Minister on 3 December 1993.

Our final Chapter, entitled "Conclusions and Recommendations," provides a brief statement of our major findings and four key conclusions that emerge from our inquiry. It provides, as well, the recommendations which we believe are necessary in light of these findings.

We have attached several appendices to this report, in addition to the routine attachments providing details relating to our hearings and other information.

In one of these the Chairman and Deputy Chairman provide an extended discussion of the issues of access to government information that have arisen persistently in the course of our inquiry, and offer some recommendations. The power to send for persons, papers and records is central to the capacity of Parliament to hold government accountable to the people for its actions. They therefore believe that our experience in the course of this inquiry raises issues of fundamental democratic principle.

Given the complexity of the process and the number of participants involved in the development of the Pearson agreements, two reference appendices are included. Appendix B provides a chronology of the events examined in our report. Appendix C provides a 'Who's Who' of the process, identifying many of the individuals who played major roles. We hope that in addition to assisting readers, these appendices may enhance the usefulness of this report as a future reference source.

Finally, we are including for reference a copy of the Nixon report, in Appendix E.

“The idea was that the government would continue to own the land, but would seriously consider any favourable proposals coming forward that would be either transferring ownership to a public body or the transfer of operating responsibility through a lease to a private body.”

Austin Douglas
Transport Canada

The evidence provided by departmental witnesses with respect to the early stages of the Pearson process indicates that standards and guidelines relating to airport terminal redevelopment were not located in a single policy specifically focused on modernizing airport terminals. One must therefore consider the Pearson Agreements in relation to a number of policies, primarily focused on other matters, which (along with the earlier decision to engage a private sector developer to build and operate Terminal 3) provided guidance for the redevelopment of Terminals 1 and 2.

1. Government-wide Initiatives

The desire to make government more business-like, both to enhance responsiveness and effectiveness and to generate efficiencies contributing to deficit reduction had been a major theme of the Progressive Conservative government since its election in 1984. With respect to global transportation policy, this desire was expressed in the July 1985 policy paper *Freedom to Move*, which argued that the structure of detailed regulation built up over the years now formed a barrier to efficiency and global competitiveness and that government needed to do less as a detailed regulator and more as a facilitator¹.

According to one Department of Transport official, within the Department the general theme of commercial orientation was interpreted as aiming to maximize private sector participation in a range of activities traditionally carried out by the Department. In the case of airports, this meant considering expansion of the traditional private sector role of design and construction to include financing and subsequent operation.

¹ Transport Canada, *Freedom to Move*, July 1985, foreword, p. 2.

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A related initiative -- the privatization of Crown corporations --took shape in 1986, with the establishment of a cabinet committee on privatization chaired by the Minister of State (Privatization), the Hon. Barbara McDougall, and creation of the Office of Privatization and Regulatory Affairs to provide support and coordination. The objective was to get government out of activities no longer viewed as necessary to meet public policy goals, and to foster greater efficiency, effectiveness and market sensitivity within the corporations by subjecting them directly to market signals.

According to Mr. Victor Barbeau, Assistant Deputy Minister of Transport (Airports) during this period, the privatization policy was not directly considered in decisions about terminal redevelopment². It does, however, indicate the broader policy directions of the government, some of which were reflected in airport policies developed during the late eighties. Similarly, the new emphasis on commercial orientation and performance would be echoed in policies with a specific application to airports.

2. Local Airport Authorities

A) The Mazankowski Task Force

The development of the policy of devolving overall management authority for major airports to local authorities began shortly after the election of 1984. In response to May 1985 budget commitments and Western Canadian dissatisfaction with centralized governmental management of airports, in October 1985, then Transport Minister Donald Mazankowski established a task force composed of representatives of communities, industry and government to examine options for the future role of government in the funding, management and operation of airports³.

In its 1986 report, the task force asserted that Canada's system of airports, while providing generally effective service, was subject to three major problems: large and growing financial deficits, limited responsiveness to local and regional needs, and inefficiencies produced by extensive government involvement. As possible responses to these problems, the task force considered four possible airport management options: private ownership, Crown corporations, locally established airport management authorities, and a commercialized version of public ownership and Transport Canada management.

The task force recommended management by local authorities, with Crown corporations as their second choice. Private sector ownership was eliminated on a series of

2 *Proceedings of the Special Senate Committee on the Pearson Airport Agreements*, Issue number 2, page 37. References to Proceedings cited henceforth as 2:37.

3 Transport Canada, *The Future of Canadian Airport Management*, Report of the Airports Task Force, 1986, p.2.

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grounds, including its potential lack of sensitivity to various publics, inadequate guarantees of increased public responsiveness, potential criticism of government subsidies, difficulties in using profitable airports to subsidize others, and difficulties in implementing federal policies such as cost reduction and bilingualism⁴.

B) The 1987 Policy

The task force recommendations provided the basis for the 1987 Airport Transfer Policy, described by the Minister at that time, the Hon. Douglas Lewis, as "the foundation of the government's approach to the management of airports"⁵.

The policy, entitled "A New Policy Concerning a Future Management Framework For Airports in Canada" and dated 8 April 1987, incorporated two dimensions, one relating to the devolution of management authority for major airports and the other relating to enhancing the commercial orientation of Transport Canada's management of airports remaining under its jurisdiction.

The devolution policy provided that the Minister of Transport would retain authority for safety and security, but would consider proposals from "interested bodies" for the ownership and/or management and operation of airports. The policy is relatively open-ended concerning eligible bodies: provinces, municipalities, local Authorities or Commissions authorized by federal or provincial legislation. "In addition, private sector leasing would be considered"⁶.

The policy sets forth a series of considerations to guide decision-making in response to expressions of interest. The government required that long-term requirements for public funding not increase, that it receive "reasonable compensation" for any facility transferred, and that satisfactory arrangements be negotiated for a series of matters including the transfer of employees, respect of existing leases or contracts, and adherence to federal programs such as Official Languages.

The other dimension of the policy, relating to a commercial orientation for airports retained by Transport Canada, sets out objectives, several of which refer to the need for business-like operations and maximized financial returns. There is also a reference to plans for commercial development, and to the anticipated establishment of a local Airport Advisory Board at each major airport, for the purpose of enhancing its business focus and local responsiveness. Finally, there is a commitment that "avenues for private sector

4 See *Proceedings*, 2:29 and 2:71.

5 See *Proceedings*, 4:5.

6 *The Future of Canadian Airport Management*, op.cit., p. 1.

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investment in traditional and non-traditional airport services would be continually explored and fostered to the maximum extent possible"⁷.

The 1987 policy reflects the devolutionary sympathies of the Mazankowski task force, with the exception that it puts forward an unranked range of devolution options (including leasing airports to private sector lessors) in place of the ranked options and exclusion of private sector ownership recommended by the task force. The 1987 policy also goes beyond the issue of managing complete airports to envision an enhanced role for the private sector in aspects of airports which Transport Canada would continue to manage.

We have not been advised of what specific considerations led the 1987 policy to depart from the recommendations of the earlier task force. Officials we questioned stated only that by 1987 there had been further examination of the different ways in which the concept of a local airport authority could be realized⁸.

C) Evolution of the Policy

Departmental officials told us that the Local Airport Authority initiative was recognized as path-breaking and somewhat experimental⁹. After 1987, as experience accumulated, Local Airport Authority (LAA) policy evolved in several respects.

In June 1989, the Department of Transport issued 36 principles supplementing the 1987 policy¹⁰. A preamble states that the Board of Directors of a Local Airport Authority must be appointed through a process "acceptable to the municipalities." The principles do not elaborate on the qualifications required from prospective authorities, but focus on defining their responsibilities, including compliance with federal laws and programs, personnel transfer requirements, safety and security and operational requirements, commercial and financial requirements, and the establishment of a community relations role.

According to Michael Farquhar, Director General, Airport Transfer, Transport Canada, in early 1990 the general requirement for local government support of an applicant for Local Airport Authority status was made more specific. Uncertainty over whether the City of Calgary had clearly expressed support for a prospective airport authority in that area led Transport Canada to formulate a requirement that the "principal local governments" in the region served by an airport each pass a resolution endorsing the structure of a prospective

7 *Ibid.*, p. 4.

8 See *Proceedings*, 2:29-30.

9 See *Proceedings*, 2:37.

10 See *Proceedings*, 2:37.

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authority before the latter could be recognized as an LAA. Unanimous support from every affected local government would, however, not be required¹¹.

3. Southern Ontario Airports - 1989 Strategy

We were advised by Mr. Glen Shortliffe that on becoming Deputy Minister of Transport (April 1988) he had found a serious policy vacuum with respect to Pearson Airport: "The policy positions of successive governments, regardless of party, had been to avoid decisions with respect to Pearson and its future"¹². He believed this avoidance behaviour to reflect, in part, the highly contentious character of airport development issues at the local level.

Decisions about the overall role of Pearson Airport within the regional and national air transport system were needed before more specific issues could be resolved. Thus, a policy review was initiated which would identify options to be considered by ministers. This process led, ultimately, to the August 1989 announcement by Minister of Transport, the Hon. Benoit Bouchard, and the Minister of State for Transport, the Hon. Shirley Martin, of the government's decision to develop Pearson Airport to its maximum capacity, so that it could serve as the primary hub of the national air transportation system into the twenty-first century¹³.

A number of short-term measures were also announced. These included transfers of some charter flights to nearby airports, renovation of Terminals 1 and 2 on a priority basis, two new runways, and increases in the number of air traffic controllers. The rationale for these measures was subsequently provided in greater detail in a January 1990 Transport Canada policy document entitled "Aviation in Southern Ontario - A Strategy for the Future." While the document focuses on recent and projected growth in traffic volumes, and the consequent pressures on runway capacity and air traffic controllers, it also refers to economic penalties incurred by congestion in the air terminal buildings and parking garages at Pearson Airport¹⁴.

11 See *Proceedings*, 5:69.

12 See *Proceedings*, 4:66.

13 See *Proceedings*, 4:67 and *Ministerial Press Release*, No. 98/89, dated August 1989.

14 Transport Canada, *Aviation in Southern Ontario - A Strategy for the Future*, 1990, p. 9.

4. Terminal 3

In addition to the policies outlined above, those considering options for private sector involvement in the Pearson terminals could seek guidance from arrangements at Terminal 3, which had been built by a private sector firm on land acquired under a long-term lease from Transport Canada in 1987.

Departmental witnesses told us that perceptions of the need for a third terminal building at Pearson dated back to the mid-seventies, waxing and waning in importance, as traffic volumes rose and fell in tandem with broader economic cycles¹⁵.

Ascending traffic volumes in 1984 and 1985 returned the issue to prominence. A departmental memorandum¹⁶ dated 15 October 1985 refers to a briefing in March of that year at which officials had reported the urgent need for a third terminal, partly to respond to a surge in traffic beyond forecasted levels during 1984. The Minister, then the Hon. John Crosbie, accepted the case but determined that any new terminal should be provided by the private sector. According to the current Deputy Minister of Transport, Mr. Nick Mulder, this decision also reflected pressures on the Department to slow the growth of government expenditures and awareness that local developers were interested in being involved¹⁷.

In its early stages, at least, the use of private sector developers to finance, construct and operate an air terminal was apparently seen as a one-time arrangement, responding to a unique set of circumstances¹⁸. In view of the complexity of the undertaking and the fact that Transport Canada did not know who the potential developers might be, the Minister decided upon a two-stage proposal-seeking process: a general call for expressions of interest would identify interested developers and canvas them for development concepts; a detailed Request For Proposals would subsequently set out the government's specific requirements to which eligible developers would respond with detailed proposals. These could then be formally evaluated.

The first stage commenced before the finalization of any departmental policies with specific reference to airport development. On 11 September 1986 Minister Crosbie announced that the Department would be issuing a call for Expressions of Interest (EOI). The EOI call, issued later that month, gave a deadline for submissions of 19 November and brought expressions of interest from eight proponents. These were then reviewed within the department, after which five proponents were invited to submit detailed proposals through the issue of a Request For Proposals (RFP) on 18 December 1986.

15 See *Proceedings*, 3:26.

16 *Transport Canada*, October 1985. Committee document, 4-1#1023.

17 See *Proceedings*, 2:41.

18 See *Proceedings*, 2:38.

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Of the five consortiums submitting acceptable EOIs, four submitted proposals by the closing date of 1 May 1987 specified in the RFP. The four proponents were Airport Development Corporation (the construction firm of Huang and Danczkay); Falcon Star (Matthews Group), Bramalea/Wardair; and American Airlines/Cadillac Fairview¹⁹. A request by one group for an extension of the closing date was denied²⁰.

The RFP defined criteria for three main issues: the development concept, the business relationship, and the qualifications of the consortium. Among the criteria related to the business plan, which one of our witnesses estimated accounted for some 40% of the evaluation, was the financial viability of the proposal. We were also advised of the inclusion of a standard clause permitting the government to terminate the search/negotiation process at any point (in which circumstances, proponents might be entitled to seek damages)²¹. As well, the RFP required the posting of a 50% performance bond, and bonds for labour and materials.

Within the Department, a committee of senior officials, supported by private sector engineering, architectural, and financial advisors, was established to evaluate the proposals. As well, an auditing firm (Touche-Ross) was engaged to oversee the evaluation process in addition to providing specialized advice on retail and commercial aspects, among others.

The formal evaluation process resulted in the selection of a preferred proponent, the Airport Development Corporation, with which (following Ministerial and Treasury Board ratification) the government proceeded to negotiate specific arrangements to be embodied in a development agreement.

Following negotiation of the development agreement, Treasury Board approval, preparation of the leases in conformity with the development agreement, Treasury Board approval of the leases, and the signing of the leases in April of 1988, development commenced. Terminal 3, with a capacity of some 10 million arriving and departing passengers, opened for business on 21 February 1991.

Our departmental witnesses were generally positive about the results of the Terminal 3 process. Victor Barbeau, the Assistant Deputy Minister within whose jurisdiction the project fell, reported his confidence that due process had been followed throughout, a view echoed by other public service officials²².

19 See *Proceedings*, 3:28.

20 See *Proceedings*, 3:37.

21 See *Proceedings*, 3:34.

22 See *Proceedings*, 3:44 and 3:37.

5. Observations and Conclusions:

A) The Devolution Policy

From the perspective of 1995, the broad thrust of the airports devolution policy developed during the late 1980s is strikingly contemporary. It attempted to detach the management of airports from the departmental bureaucracy centralized in Ottawa, and create a structure that would be more responsive to local needs and priorities. At the same time, the policy undertook to increase efficiency by fostering a more commercial orientation and increased reliance on the private sector to perform traditional and non-traditional functions. Ottawa's role would be limited to ensuring that broad public interest objectives, such as safety, continued to be met.

During the 1980s, the combination of mounting deficits and the pressures of global competition were obliging all governments to accept that the traditional ways of providing public services were becoming increasingly unsustainable. The broad thrust of the 1987 devolution policy, which focused on meeting public interest objectives while shifting non-essential roles to the private sector, was, during the late 1980s, increasingly adopted by other Western democratic governments as they came to terms with deficit problems and outdated and inefficient administrative mechanisms. In the sphere of airports management and operations, the 1987 devolution policy and its subsequent refinements moved Canada to the leading edge of this trend.

Within Canada, the merit of the policy for airports commercialization and devolution has been recognized by the present government as well as its predecessor. After an extensive review of transport policy following the 1993 election, the current Minister of Transport released the National Airports Policy in July 1994. This policy affirmed the need for a more commercialized transportation system, specifically including airport operations on the list of activities to be made more subject to market discipline and business principles, and indicating that public and private-sector partnerships were among the options to be examined²³.

With respect to airport devolution, officials described the new policy as having "...added on to what were some fundamentals in terms of a local airport authority"²⁴. The central difference was the addition of local and federal government representatives to local airport authority boards, thus modifying the accountability model established by the 1987 policy. The fundamental public policy thrust, however, focusing on the devolution of major airports to local authorities, remained consistent: "the federal

23 Transport Canada, *National Airports Policy*, July 1994, p.2.

24 See *Proceedings*, 2:19.

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government's role in airports will shift ...from owner and operator, to landlord and regulator"²⁵.

Our conclusion is that the merits of the 1987 commercialization and devolution policy speak for themselves, having stood both the test of time and the test of changing governments.

B) The Decision to Develop Pearson

Fundamentally, the decision to develop Pearson Airport was a move to stop avoiding decisions and respond to the pressures of burgeoning air traffic volumes in the late 1980s. These pressures arose, in part, from an earlier cycle of regulatory reform which had led airlines to adopt new operating and pricing strategies and to shift increasingly to "hub and spoke" style operations with frequent flights between strategically located "hub" airports, sustained by passenger flows from local "feeder" airports.

The shift to "hub and spoke" operations reflected the heightened competitive pressures created by deregulation, and enabled airlines to compete effectively in terms of flight frequency, number of destinations and lower prices (a byproduct of optimal aircraft utilization). At Pearson, the new system exaggerated passenger volume pressures already present more broadly within the system, and increased the need for the efficient handling of passengers. Pearson's emerging role as a "hub" meant that delays there could result in backed-up traffic in, for example, Halifax, Vancouver, Edmonton, Calgary, Winnipeg, Ottawa and Montréal, and grounded flights in London, Paris, Frankfurt and Tokyo²⁶.

The major alternative "hub" airport site available in the Toronto region was the Pickering site. The 1990 Transport Canada policy paper explaining the decision to develop Pearson Airport indicated that this alternative had been adopted in 1968. Development was halted in 1975, however, because of intense public controversy and the provincial government's decision not to provide the roads and utilities required to service the site. According to Mr. Glen Shortliffe, who provided us with an overview of background policy issues, successive ministers and governments attempted to redirect traffic through Mirabel Airport, but without success²⁷. An attempt to revive the Pickering site in the late 1980s would very likely have led to a repetition of the same strife that had brought it to a halt in the mid-1970s, compounded by concerns about the expenditure of public money to create another Mirabel-style "white elephant."

25 See *Proceedings*, 4:86.

26 See *Proceedings*, 4:91.

27 *Report of the Auditor General*, October 1990. See also *Proceedings* 30:12 and 30:28 ff.

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The deregulation reforms of the mid-1980s freed the airlines to respond to the marketplace. By the late 1980s, the marketplace had made a clear decision about where airport development was needed; all that remained was for the government to recognize that fact. In our view, this recognition led to the decision to develop Pearson International Airport.

C) Terminal Three

The long-term lease of land to the development firm Huang and Danczkay for the purpose of constructing Terminal 3 was a very early government response to the systemic pressures and constraints that would result in a more formal policy response later in the 1980s. It provided a kind of early test-case for some of the ideas that would find their way into the 1987 local airport authority policy, particularly the enhanced involvement of the private sector in order to increase market responsiveness and efficiency.

Pearson Airport's Terminal 3 was not yet open when it was first announced that proposals for redeveloping the other terminals would be sought. Terminal 3 was, however, near enough to completion to provide tangible evidence that the public sector-private sector partnership model was workable. The fact that development had occurred at all established that public sector and private sector objectives relating to airport terminals were not necessarily opposed and could even be mutually supporting. All that was needed was some imagination on both sides, and a willingness to question traditional thinking.

Our conclusion is that, by 1987, when the initial devolution policy was developed, Terminal 3 had established the fundamentally important precedent that public and private sector partnerships were a workable option for airport terminal development. This precedent provided tangible support for the commercialization emphasis in that policy.

D) Auditor General's Report

In his 1990 report, the Auditor General of Canada included some criticisms of Transport Canada policy. Among the targets were the lack of an overall strategy to respond to the impacts of deregulation (including increased volumes of traffic, which were already apparent in the United States); the lack of a policy statement and financing philosophy supported by an analysis of the implications of increased use of private sector financing for terminal development; and the lack of a comprehensive plan for funding infrastructural development at airports.²⁸

These criticisms point to a broader challenge faced by Department of Transport during the late 1980s: how to respond to the new requirements of strategic policy-making

28 *Report of the Auditor General*, October 1990, 30:12 and 30:28 ff.

Chapter I - The Policy Framework

in areas such as airport devolution when the staff's primary strengths were grounded in the hands-on administration and management of airports.

The 1987 devolution policy faithfully reflected both the strengths and the weaknesses implicit in this situation. Considered along with its later supplements, this policy is extremely detailed with respect to administrative matters, such as the respective duties of the government and a local airport authority. It is, however, much vaguer with respect to, for example, the criteria to be employed in granting official status to Local Airport Authorities. As will be seen later on, this vagueness was to be source of persisting problems and confusion.

In fairness, it must be recognized that other departments also faced new policy-making challenges during this time. Many of these were also criticized by the Auditor General. In general, line departments whose traditional focus had been the provision of administrative and service-delivery functions had special difficulties in responding to the new realities suggested in phrases such as "reinventing government."

On balance, the technical quality of the Department of Transport policy framework left room for improvement, but was consistent with governmental norms. It should be recognized as an innovative first attempt at dealing with such new challenges as airport devolution.

E) Conclusions

The 1987 airports devolution policy, with its new focus on commercial orientation and private sector involvement, did more than provide an imaginative solution to problems relating to Transport Canada's role in managing airports in the mid-1980s. **It anticipated broader initiatives of the 1990s, including the program review of 1994-5 with its comprehensive attempt to focus more tightly the role of government in the economy.**

In our view, the public servants responsible for the emerging airports policy during the 1980s should feel a sense of real accomplishment at having implemented the vitally important first steps in a new direction for this policy sector. Equally, the public policy vision that provided guidance to officials should be recognized for what it was, a prescient anticipation of the realities of the 1990s.

"I said if there is any delay in getting on with renovating terminals 1 and 2 then I would suggest you board it up"

Hazel McCallion
Mayor of Mississauga

"The ideal time frame to have commenced the redevelopment was in 1993 while passenger numbers were down..."

David Robinson
Air Canada

The decision to seek private sector proposals for the modernization of Terminals 1 and 2 emerged in the late 1980s from the consideration of circumstances at Pearson in the light of the objectives and priorities in the government's policy framework.

A key consideration for decision-makers was the condition of the terminals, especially in combination with passenger volume pressures. Unsolicited proposals from various developers testified to a high level of interest in private sector involvement, as did the engagement of lobbyists to promote various individual proposals. Efforts to form a Toronto local airport authority also had to be taken into account, since such an authority would have been able to assume responsibility for terminal development decisions.

1. Pearson Airport in the Late 1980s

Witnesses appearing before us were in general agreement that, as of the late 1980s, Pearson Airport was experiencing some significant problems. Indeed any traveller could draw this conclusion from the sometimes lengthy delays in the air and queues and other inconveniences on the ground.

Perhaps the most outspoken of our witnesses was Mr. Glen Shortliffe, whose overview from his position as Deputy Minister of Transport led him to conclude that, as of 1988: "Pearson was a mess. It was a disgrace. And worst of all, it was not working"²⁹. Among the problems cited were too few air traffic controllers for existing traffic, let alone projected increases, and the inadequate capacity of the runways. Finally, Terminal 1 had deteriorated to the level of "a slum," with a parking garage that was frequently closed, while

29 See *Proceedings*, 4:64.

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Terminal 2 had too few gates. Refurbishment of the terminals would have been needed, according to Mr. Shortliffe, irrespective of what was done concerning controllers and runways³⁰.

The Hon. Douglas Lewis, Minister of Transport at the close of this period (1990), agreed with Mr. Shortliffe. He told us that the two terminals had been designed to handle up to 12 million passengers per year, but in 1990 were handling 20 million. Overstrained facilities had resulted in a range of on-ground delays, difficulties in obtaining cabs, line-ups at Customs desks, and general overcrowding. We did not hear from Mr. Lewis' immediate predecessor, the Hon. Benoit Bouchard, but his reference to the redevelopment of Terminals 1 and 2 in his policy statement of 18 August 1989 suggests that his view of the situation was the same.

Other witnesses, some of whom would later disagree with the government over how terminal redevelopment should take place, appear to have broadly agreed with the Minister and senior officials as of the late 1980s. Mr. Gerald Meizner, a recent President of the Metropolitan Toronto Board of Trade and Chairman of the Task Force that set up the organization that would later seek local airport authority status, advised us that Pearson was perceived as a "model of neglect," and general capacity problems appeared to be urgent during the late 1980s³¹. As recession took hold, however, the sense of urgency diminished and those organizing a local airport authority felt that they could benefit from this to perfect the organizational aspect³².

As the main occupant of Terminal 2, Air Canada was a central client of Transport Canada and a key player in determining redevelopment requirements. According to our Air Canada witnesses, as traffic grew in the late 1980s, and it became clear that Terminal 3 would be giving a competitive edge to airlines serviced there, Air Canada developed a two-phase master plan for refurbishing Terminal 2³³.

Phase one construction, co-financed by Air Canada and Transport Canada and focusing on refurbishing the domestic wing, was launched in 1989 and would be completed by 1991. With respect to the second phase, which dealt with international traffic, it was clear by 1989 that Transport Canada could not provide funding. As a result, Air Canada reviewed unsolicited proposals from several private sector developers interested in underwriting redevelopment costs and, in June of 1990, conveyed its support for the Paxport proposal to Transport Canada. In 1989 and 1990, Air Canada's basic position was that "...we wanted to

30 See *Proceedings*, 4:80.

31 See *Proceedings*, 5:58.

32 See *Proceedings*, 5:21.

33 See *Proceedings*, 12:75.

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have a fix for the terminal"³⁴. Relations with governments and potential alternative participants appear to have been consistently managed, and in some cases initiated, in the light of this objective.

2. Developer Initiatives

A) Unsolicited Proposals

Unsolicited proposals related to either Terminal 2 on its own, or the Terminals 1 and 2 combination, began to arrive in ministerial offices early in 1989. The early proposals were submitted by firms with established interests in Pearson Airport, and reflected their perception that immediate action was needed.

The first of five unsolicited proposals of which we were told arrived in March of 1989 and was submitted by the Airport Development Corporation. This firm had been established by the construction firm of Huang & Danckay, which had built Terminal 3. In May 1989, Air Canada also submitted a proposal, focused on its requirements in Terminal 2.

In the fall of 1989, the Minister of Transport received several additional unsolicited proposals, prompted by the support for private sector involvement implicit in the ministerial policy statement on the need to expand capacity at Pearson (18 August 1989).

In September 1989, a proposal was received from Paxport Inc., a consortium formed in early summer of 1989 as a joint venture between the Matthews Group and Bramalea Inc.³⁵.

In early 1990, a proposal came from Canadian Airports Limited (a consortium whose major component was British Airports Authority PLC)³⁶. In addition, in June 1990, Air Canada submitted a proposal developed by Paxport, along with a statement of Air Canada's support.

We were advised by a Department of Transport official that unsolicited proposals typically have little impact on decision-making, because there has been no formal bidding process with requirements made public to all interested parties. We heard that the unsolicited proposals for the redevelopment of Terminals 1 and 2 followed the typical pattern. They sat on a shelf until it was decided to proceed with terminal redevelopment by means of a formal request for proposals to private sector developers. They were then

34 See *Proceedings*, 12:85.

35 See *Proceedings*, 8:80 and 9:22.

36 See *Proceedings*, 6:42.

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consulted by officials who were defining technical options while preparing a Request For Proposals³⁷.

B) Follow-up Activities

Testimony indicates that the developers did not merely submit unsolicited proposals to the government and passively await a response. On the contrary, they undertook a wide-ranging campaign to recruit support both within the government and among other Pearson airport stakeholders. The existence of such a campaign was fully apparent to the Minister of the day, whose general comment on lobbying was: "it's a fact of life. ...(but) nobody, no government, whether it's Liberal, Conservative or whatever, wants to be beholden to lobbyists on things"³⁸.

We heard about the efforts of Paxport in great detail. This reflects the fact that Mr. Raymond Hession, the first President of Paxport, was questioned closely on Paxport's activities because Paxport's proposal had been judged the best overall. We found Mr. Hession to be a very forthcoming and cooperative witness, even supplying personal diaries for our scrutiny. Soon after its creation Paxport actively sought support from Air Canada. It focused on the government's financial incapacity to undertake enough development in Terminal 2 to ensure that Air Canada need not fear losing a competitive edge to airlines using the soon-to-be opened Terminal 3³⁹.

As a result of this initiative, Paxport enjoyed a positive relationship with Air Canada, initially reflected in the airline's support for Paxport's unsolicited proposal. On 1 June 1990, Mr. Jeannot, then President of Air Canada, wrote to Minister Lewis referring to a meeting of June 4 at which Air Canada had expressed support for the Paxport unsolicited proposal. The letter also conveyed Air Canada's strong opposition to a competitive bidding process which could result in the acceptance of a high cost proposal for redevelopment with costs passed on to Air Canada as tenant.⁴⁰

As well, internal Paxport documents made available to us suggest that a joint lobbying campaign was developed at subsequent meetings between Air Canada and Paxport officials. This identified Ministers and officials to be targeted and set out issues to be addressed during August and September 1990, immediately before a cabinet meeting was scheduled to consider proposals from Minister Lewis⁴¹.

37 See *Proceedings*, 2:45 and 6:45.

38 See *Proceedings*, 4:19.

39 See *Proceedings*, 9:24.

40 See *Proceedings*, 12:115.

41 See *Proceedings*, 9:26.

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More broadly, Mr. Hession indicated that the progress of decision-making within the government on the terminal redevelopment issue was also closely monitored during this period. A memorandum dated 12 July 1990 provides a summary for Paxport executives of what is described as a "full debriefing" which Mr. Neville (a Paxport lobbyist) had received from Mr. Warren Everson, an executive assistant to the Minister of State for Transport the Hon. Shirley Martin, concerning discussions at a meeting of the Priorities and Planning Committee of Cabinet the previous week. Among issues covered in the memorandum are the Pearson-related issues which the Government intended to address; the Minister's resistance to the non-competitive process of developer selection promoted in various unsolicited proposals, including one from Air Canada/Paxport; advice from Department of Transport officials that a major expansion of Terminals 1 and 2 was not urgently needed; and the structure of the competitive process of developer selection being considered. According to Mr. Hession, this information concerned issues widely under discussion at this time within the Department, and was not of earth-shattering importance.

Mr. Hession undertook to meet with the full range of stakeholders to sell the idea that Terminals 1 and 2 needed redevelopment, and that the Paxport proposal represented the most effective way to do this. Among those contacted were the CEOs of major Toronto companies, "some of whom, I am happy to say, wrote to the minister, as indeed you heard Mr. Lewis say, saying, 'Yes, let's get on with it'"⁴²

While we have not received equally detailed information from those who submitted other unsolicited proposals, it is reasonable to assume that they, too, were active in promoting their ideas, both directly to public officials, and indirectly to and through municipal governments, Pearson tenants and users.

It is also reasonable to assume that these efforts by developers reinforced the impression of federal officials and politicians that Terminals 1 and 2 were urgently in need of attention. At the same time, both officials and politicians report that they were fully aware that an active lobby had emerged. They have, however, expressed their confidence that this did not alter the course of events, partly because developers were not solely responsible. The Toronto Board of Trade, for example, had organized a letter-writing campaign by its members and sent the Minister the results.

3. Local Airport Authority Initiatives

As has been seen, the 1987 policy on the devolution of management authority for airports, to local groups, left it to such groups to establish potential local airport authorities, obtain sufficient support from affected municipal governments, and seek recognition from Transport Canada. By early 1990, groups had been recognized for negotiation purposes in

42 See *Proceedings*, 8:81.

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a number of communities, and negotiations ultimately to result in local airport authorities were underway for Edmonton, Calgary, Montreal and Vancouver.

As of 1990, attempts to organize a local airport authority in Toronto remained unsuccessful, despite the encouragement of the Metropolitan Toronto Board of Trade since the mid 1970s⁴³. According to Mr. Gary Harrema, Chair of the Durham Regional Council throughout this period, the 1987 devolution policy and a desire to keep up with Vancouver and Montreal spurred the business community in the Toronto region to make a strong push for a local airport authority. The political impediments were, however, considerably more significant for the Greater Toronto Area than elsewhere, because of the governmental structure, or more accurately its absence. Five regional municipalities, containing some 35 local governments, had to come together in support of the initiative, and "...it took a long time to get that orchestrated because we don't have a party system"⁴⁴.

By 1989, according to Mr. Gardner Church, at that time Ontario's Deputy Minister for the Greater Toronto Area, there were "the beginnings of some momentum" towards a local airport authority among the heads of regional councils in the Toronto area. In 1990, agreement was achieved among the regional councils on "the framework for an airport authority," and efforts were launched to establish a board of appropriate nominees⁴⁵. According to Mr. Church, as of mid- to late 1990, the main issue between regional council heads and the federal government concerned the federal view that elected politicians should not sit on local airport authority boards (seen, at the local level, as an impediment to political accountability)⁴⁶.

Mr. Church went on to acknowledge that, new "momentum" notwithstanding, Toronto continued to lag behind communities such as Vancouver and Pittsburgh with respect to airport development and a range of other infrastructure issues into the early nineties.⁴⁷ Nor could this problem be blamed on the federal government or its local airport authority recognition policy:

I don't think there's any question that Toronto was slow off the mark, and any suggestion that that was the fault of the federal government is simply wrong.⁴⁸

43 See *Proceedings*, 5:37.

44 See *Proceedings*, 5:37 and 5:16.

45 See *Proceedings*, 5:43.

46 See *Proceedings*, 5:13.

47 See *Proceedings*, 5:42

48 See *Proceedings*, 5:54

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Briefing materials provided to heads of the various municipal councils attempting to establish a local airport authority make it clear that, even late in 1990, these efforts were at a very preliminary stage. A memorandum from Mr. D.A. Lychak, City Manager of Mississauga, sent to heads of council on 3 December 1990, before a meeting scheduled with Minister Lewis, states that "it would be impossible to bring a unified position to the Minister, since we are in the very early stages of our LAA analysis." The memorandum went on to recommend that heads of council express concern to the Minister about the possible implications of the Terminals 1 and 2 redevelopment project for the financial viability of any future local airport authority, and move with urgency to create a 21-person task force to pursue base case LAA studies relating to Pearson Airport, the Pickering lands, Hamilton Airport, and Toronto Island Airport⁴⁹.

4. The Decision to Proceed with Redevelopment

Early in 1990, as a follow-up to the announcement of the 1989 Southern Ontario airport strategy, the Department of Transport released a policy document containing traffic flow projections for Pearson Airport. According to these projections, annual aircraft traffic volume would increase from 348,000 in 1988 to between 356,000 and 485,000 by 1996, and between 379,000 and 541,000 by 2001. These increases would come on top of the increase from 240,000 to 348,000 between 1983 and 1988, which reflected an increase in passenger volumes of approximately 40%, from 14 million to 20 million people. All these passengers were processed through Terminals 1 and 2, which had been designed to handle 12 million passengers a year; Terminal 3, with its 10 million passenger capacity, had not yet become operational. Reflecting this situation, the study referred to "congestion problems that occur in the terminal buildings, the parking garages, and the loss of conventions to the Toronto area"⁵⁰. As well, the study estimated that by 1996 the existing runway system would not be able to support anticipated demand.

According to Minister Lewis, anecdotal evidence of problems at Pearson continued to arrive at his office with some frequency during this period: "from the day I was appointed to the day I left, there was hardly a day when it wasn't brought to my attention that there was a need to 'fix Pearson'".⁵¹ He specifically referred to complaints from the Metropolitan Toronto Board of Trade, provincial and local governments, and business users of the airport⁵².

In the early fall of 1990, it remained Minister Lewis's view that Pearson users and tenants generally agreed that the airport was "out-stressed, unsafe, unreliable and an

49 See *Proceedings*, 4:54.

50 Transport Canada, *Aviation in Southern Ontario - A Strategy for the Future*, January 1990, p. 9.

51 See *Proceedings*, 4:6.

52 See *Proceedings*, 4:7.

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embarrassment to Canada"⁵³. Convinced that the voters were demanding action, and that inaction was causing economic damage to the Toronto region, the government decided to proceed directly with a program to upgrade the airport. A central requirement for any proposal would be that it "fix the problem quickly and properly"⁵⁴.

At the time of this decision, the government was aware of the views of representatives of the Greater Toronto Area, who were calling for decisions about development to be postponed so that this authority could deal with them. It was the Minister's view, however, that the whole airport transfer initiative, even in locations where discussions were proceeding relatively smoothly, "was going very, very slowly. After more than three years, none of these initiatives was anywhere near fruition"⁵⁵. In what was viewed as a unique situation in Toronto, the municipalities and the Greater Toronto Area had not achieved agreement on how a local airport authority would work. To the Minister, the Local Airport Authority route "just didn't seem like a viable alternative"⁵⁶.

Funding also posed a problem. The government did not consider itself able to provide this from general revenues, given fiscal pressures at that time. The main government funding alternative -- generating the financing by levying a charge on terminal users (passenger facility charge) -- was not seen as politically acceptable, given the intensity of public reaction, then at its height, to the GST. Also, the combination of public sector and private sector terminals at Pearson Airport would have made it difficult to implement such a fee⁵⁷.

As well, the decision to proceed required consideration of several interrelated problems, including runway capacity, the environmental impact of increases in runways and traffic volume, and terminals. According to Minister Lewis, the relation between runway and terminal enhancement was regarded as a "which comes first, the chicken or the egg" problem to be best addressed by moving on both. Action on the terminals would thus take place at the same time as the environmental impact assessment required before runway construction could take place⁵⁸.

Since the local airport authority option was not attainable in the case of Pearson at this time, a private sector option to lease, renovate and operate seemed to be the only possibility. During his appearance before us, Minister Lewis stressed several arguments in

53 See *Proceedings*, 4:8.

54 See *Proceedings*, 4:8.

55 See *Proceedings*, 4:9.

56 See *Proceedings*, 4:10.

57 See *Proceedings*, 4:9.

58 See *Proceedings*, 4:6.

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favour of this option, which was not an entirely new idea, but rather extended the concept of airport leases already widely practised in the system. It would provide a timely resolution to the problems of Terminal 1 and 2, and would follow the pattern of Terminal 3, which "didn't cost the Canadian taxpayer a dime"⁵⁹. As well, continued Crown ownership would permit regulatory oversight with respect to safety and security, while enabling private sector efficiencies to be achieved in other areas.

The announcement that the government would seek private sector proposals for the refurbishment of Terminals 1 and 2 was made on 17 October 1990. The next day, Minister Lewis informed interested developers of the urgency of the situation, and of the cabinet decision to fast-track the project so that renovations could be completed as quickly as possible. According to the Minister, the initiative was then handed over (save for major policy decisions which would be referred back to ministers from time to time) to departmental officials who were to develop a formal Request For Proposals setting out in substantial detail what the government was seeking and the criteria for evaluating proposals.

5. Observations and Conclusions

A) Process

One of the most serious allegations made in connection with the Pearson Agreements is that these reflect the fact that the ability of public officials to perform their duties was in some way compromised, either by lobbyists or by inappropriate pressures from the political level.

As for other stages of this process, we systematically asked officials who had had significant responsibilities relating to the decision to invite private sector proposals for their views on this process. In particular, we asked whether they personally believed they had been subjected to requirements for speed which compromised their work, or to interference from the political level; whether lobbyists had influenced their decisions; and whether, more generally, they were satisfied that the requirements of due process had been met.

Without exception, responsible officials endorsed the process in which they had participated. In particular, the process up to the public announcement that private sector proposals would be sought was endorsed by the Hon. Douglas Lewis, Minister of Transport during this period; Mr. Glen Shortliffe, who was Deputy Minister of Transport for all but the final months of this period⁶⁰; Mrs. Huguette Labelle, Deputy

59 See *Proceedings*, 4:10.

60 See *Proceedings*, 4:92.

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Minister for several months at the end of the period⁶¹; and Victor Barbeau, Assistant Deputy Minister, Airports.⁶²

With respect to any influence by lobbyists, the comments of Mr. Shortliffe were particularly direct: "I must say, sir, that I have watched over a number of years a lot of lobbyists get paid a lot of money and their actual influence on the way projects are developed, negotiated or decided upon is zip"⁶³.

Our evidence would suggest that lobbyists were rather more effective, however, in gaining access to timely information about the status of government decision-making on matters of interest to their employers. While information-gathering is not influence, and its occurrence does not compromise the decisions which ultimately emerged, we think that it is appropriate to sound a cautionary note to the staffs of ministers and others who may be privy to confidential Cabinet discussions. Wherever there are people who know things and others who are curious, there will be those who succumb to the temptation to enlarge their sense of personal importance, however temporarily. The actual disclosure of cabinet confidences is, however, an infraction of the law and those who cross this boundary are subject to prosecution.

In our hearings, we found no evidence to contradict participants' unanimous affirmation of the complete integrity of the process leading up to and including the decision to seek proposals from the private sector. Our conclusion is that the process fully enabled the democratically elected representatives of the people to serve the public interest as they perceived it.

B) Policy

In 1990, two basic issues relating to Terminals 1 and 2 at Pearson Airport faced Minister Lewis and the government. The first issue was whether they needed redevelopment at all. If they did, how should redevelopment be financed, how should it be carried out, what should be the involvement of the private sector (if any) and how should it be achieved? These issues require discussion in sequence.

(i) Was Redevelopment Needed?

There seems to have been virtual unanimity, during the late 1980s, that Terminals 1 and 2 at Pearson Airport should be modernized. As our hearings have established, the recognition of the need for modernization was common to Air Canada, those attempting to

61 See *Proceedings*, 8:39.

62 See *Proceedings*, 3:43.

63 See *Proceedings*, 4:92.

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establish a local airport authority, developers and the federal government. The need for development was thus not in dispute, though its timing and pace was. In the words of Mississauga Mayor Hazel McCallion, whose comments reflect perceptions as of the early 1990s in the municipality most directly affected by Pearson and most immediately familiar with it:

I said if there is any delay in getting on with renovating Terminals 1 and 2 then I would suggest you board it up⁶⁴.

We have heard no evidence that would contradict, five years after the fact, the unanimous verdict of those who knew Pearson Airport best: those who worked in it and used it on a daily basis. Our conclusion is that the government's decision to include Terminals 1 and 2 in its broader development program responded directly to the expressed needs of its users.

The decision also responded to the pattern of emerging demand in airport traffic, as recognized in the 1989 ministerial strategy and the 1990 policy study that supported it. These initiatives responded to the reality that the marketplace had selected Pearson Airport as eastern Canada's major "hub" facility. This airport therefore had to be developed in order to fulfil this role, which required it to compete effectively with other "hub" facilities across North America. Failure to develop would thus ultimately bring penalties extending far beyond the inconveniences, safety concerns and inefficiencies affecting existing users. It would have wide-ranging regional economic competitiveness implications.

(ii) If So, How?

An immediate issue facing the government, once the need for terminal redevelopment at Pearson had been recognized, was how to finance it. As of 1990, Transport Canada was under severe budgetary pressure, as a result of broader government deficit-reduction initiatives. According to its present Deputy Minister, a number of essential projects had already been deferred or downsized. Furthermore, as has been seen, the Auditor General was at this time reaching negative conclusions about the Department's lack of a comprehensive plan for funding infrastructural development at airports. There was nothing to insulate airport development from the fiscal constraints applying more broadly to the Department and the government.

As has been seen, the innovative airports management policy framework developed during the late 1980s provided a possible solution to the Pearson dilemma: the enhanced private sector involvement in traditional and non-traditional roles that policy specifically called for. Furthermore, Pearson Airport was already the site of a directly relevant test-case:

64 See *Proceedings*, 20:8.

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the arrangement under which Terminal 3 was being constructed by a private sector firm. Given this conjunction of policy direction and precedent, the possibility of an arrangement with the private sector for redevelopment of Terminals 1 and 2 naturally arose.

In addition to being the obvious solution to the government's financial dilemma, the involvement of the private sector addressed a second difficult question: how much immediate redevelopment was actually needed. A private sector consortium, developing the terminals under the discipline of market forces, was by definition the ideal mechanism to ensure the enhanced market responsiveness sought in the 1987 policy. In the case of the Pearson terminals, a private sector consortium could be relied upon to provide redevelopment, as and when it was genuinely needed by airport users and could be supported by the revenues generated by passenger volume. The nature and scope of development would be determined by the marketplace, rather than planners in Ottawa.

The market-responsive alternative to direct private sector involvement was the establishment of a local airport authority, as contemplated in the 1987 policy. As has been seen, however, in 1990 this alternative remained entirely hypothetical since the formation of such an authority was at an extremely preliminary stage. It is important to recognize, as well, that in 1990 the Minister needed only to decide whether to announce an intention to proceed with redevelopment by the private sector. This announcement did not preclude involvement by a local airport authority, should one have emerged at a later date.

The demand for terminal redevelopment, as expressed to the Minister by an extensive range of airport users and beneficiaries, was urgent. We believe it would have been irresponsible to refrain from action, on the grounds that there were signs of an emerging interest in forming an airport authority among Toronto municipalities.

Indeed, a refusal to act in 1990 would have left the Minister open to accusations, in our view fully justified, that policy predilections originating in Ottawa were being allowed to displace the expressed needs of the Toronto region as the basis of government decision-making. Deliberate inaction in 1990 would furthermore have gone directly against the spirit of the 1987 policy, which aimed to release airports from thralldom to centralized government management and let them respond directly to local needs and the requirements of the travelling public.

“I must say, sir, that I have watched over a number of years a lot of lobbyists get paid a lot of money and their actual influence on the way projects are developed, negotiated or decided upon is zip.”

Glen Shortliffe
Former Clerk of the Privy Council

After the Cabinet decision to request proposals from developers for the redevelopment of Terminals 1 and 2, the onus reverted to Department of Transport officials. Their job was to proceed with the development of the Request For Proposals document which would detail the government's requirements and guide developers in preparing their final proposals.

In performing this task, departmental officials coordinated the work of technical specialists from both the Department of Transport and other departments, relying on consultants for much of the detailed work. They also sought guidance from the Minister when policy issues arose, and consulted the developers and other stakeholders in order to ensure that the eventual requirements would meet with a positive response⁶⁵.

1. Standard Practices

The process of developing the Request For Proposals was subject to a number of general governmental guidelines. According to Mr. Al Clayton, Executive Director of the Bureau of Real Property Management at Treasury Board, any project involving the long-term leasing of federal lands and buildings would fall within general Treasury Board policy principles and would, as well, be subject to more specific departmental policies and procedures⁶⁶.

Mr. Clayton pointed out that private-public sector joint partnerships are by no means a recent development. On the contrary, they have played a major role in developing the country. Examples cited were the Hudson's Bay Company and the companies that built the railways. Such partnerships remain in widespread use and have become more popular in

⁶⁵ See *Proceedings*, 3:43.

⁶⁶ See *Proceedings*, 3:5,7.

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recent years, both in Canada and elsewhere, as governments redefine their roles in the face of diminished resources⁶⁷.

Since 1992, tendering for long-term leases of federal lands has come under a general policy framework established by the Treasury Board under the legislative mandate of the *Federal Real Property Act, 1992*. When reviewing arrangements proposed by departments, Treasury Board looks for adherence to four principles: (1) a fair return to the Crown based on the market value of the leased property; (2) a fair and equitable opportunity for private sector firms to bid, including a reasonable time to develop offers; (3) government acceptance of the highest offer or "best value," on the basis of an already established evaluation process that may involve criteria other than highest dollar value; and (4) that the lease terms be as short as possible consistent with the need to obtain financing of the lease⁶⁸.

Mr. Clayton told us of attempts to add specific content to some of the policy principles developed by Treasury Board. It was found, however, that limited use of land leasing in North American real estate markets made it difficult to specify an appropriate term for leases of federal lands. We were advised that the National Capital Commission relies on an industry standard that is twice the length of a normal mortgage, plus a few years. The security provided by a lease of this length makes lenders willing to provide financing at favourable rates, which in turn enables a private developer to maximize returns to the government. For a project such as redeveloping an airport terminal, according to Mr. Clayton, a lease in the sixty- to seventy-year range would be considered appropriate⁶⁹.

One standard clause, with respect to long-term lease agreements was the provision that the government cannot unreasonably withhold the transfer of ownership and equity between private sector parties. Such a clause preserves a requirement that government must approve an ownership change, while recognizing that changes of ownership cannot be precluded, given the length of the lease⁷⁰.

In administering a process establishing a lease of federal lands, a department must report to Treasury Board and receive approval, at specified junctures, from the ministers who comprise the Board. At a minimum, submissions must be made before the issue of the Request For Proposals, following the selection of a winning bid or proposal, and following the development of a detailed agreement. Furthermore, Treasury Board may at its discretion establish additional requirements depending on the nature of an individual project⁷¹.

67 See *Proceedings*, 3:5,6.

68 See *Proceedings*, 3:6.

69 See *Proceedings*, 3:10.

70 See *Proceedings*, 3:31.

71 See *Proceedings*, 3:7.

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In order to obtain Preliminary Project Approval, which would be required before the issue of a Request For Proposals, a justification of both the project itself and decisions about alternative mechanisms must be provided. At this stage, for example, consideration would be given to the relative merits of tendering, which sets out detailed requirements to be met by bidders, and the use of a request for proposals, which sets out objectives and encourages bidders to develop creative solutions. The evaluation process is also discussed at this time.

In order to ensure that Treasury Board concerns are addressed in advance of Treasury Board submission points, and to identify and address any implications that a major Crown project may have for other departments, there is a considerable amount of interaction between the department responsible for the project and other departments during the development of such projects.

In addition to the bilateral contacts involved with Treasury Board scrutiny, an interdepartmental committee is normally established to facilitate this broader interaction and examination. In the case under review, an interdepartmental committee was established with a core membership of Treasury Board, Finance and Privy Council Office officials. According to Mrs. Labelle, Deputy Minister at this time, as would be expected for a project of the size and ground-breaking character of the T1T2 redevelopment, outside departments were quite heavily involved.⁷²

2. Inside the Department

According to John Desmarais, who reported to Mr. Gerald Berigan, the Ottawa Director General in charge of the development of the RFP, a small steering committee was assembled in the summer of 1990, in anticipation of the Minister's announcement that proposals would be requested from private sector developers⁷³. Under the chairmanship of ADM Victor Barbeau, the committee consisted of officials at Pearson Airport who would do much of the detailed work, the Major Crown Projects general manager (also Toronto-based), and Ottawa officials who were to provide departmental support and policy direction.

Initial tasks of the steering committee were to develop required approval documents, to identify policy and process issues that would require attention in the early stages, and to conduct required studies⁷⁴. As well, a small working group reviewed the Terminal 3 experience and developed an overall work plan⁷⁵.

72 See *Proceedings*, 8:12.

73 See *Proceedings*, 11:87.

74 See *Proceedings*, 11:88 and 6:7.

75 See *Proceedings*, 6:26.

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Deputy-Minister Huguette Labelle, as well as officials more immediately involved, told us that work on the Request For Proposals did not proceed at an urgent pace during the fall of 1990 and early months of 1991 because the terminal development was initially supposed to proceed in step with other developments at Pearson⁷⁶. In the fall of 1990, Cabinet had decided to go ahead with the required environmental assessment of a proposal to expand the runways and obtain clearance for this expansion before moving on terminal redevelopment.

As well as preparing draft RFP documents and related studies, the project team engaged the firm of Price Waterhouse in February 1991, to serve as the overview consultant for the entire RFP preparation process and to prepare initial drafts of the RFP itself⁷⁷. As well, at approximately the same time, the firm of Coopers, Lybrand was retained by the Minister to ensure the probity of the proposal call process⁷⁸.

Also during this period, technical information was assembled for use by proponents in proposal preparation. This included engineering drawings, engineering reports, a complete catalogue of leases and contracts that would have to be signed, and the identification of groups of Transport Canada employees who would be transferred. In cases where policy questions remained, alternative draft documents were prepared so that the project team would be ready to respond expeditiously to political direction. For example, in May 1991 a draft Expressions of Interest document was prepared, proving that the decision to proceed with a single-stage process involving only a call for proposals had yet to be made.

Initially, it had been expected that the environmental assessment results would be available in a matter of months, but this process soon proved to be, in the words of Mrs. Labelle, "a movable feast in that the dates changed a number of times"⁷⁹. The assessment was delayed by unforeseen information needs, by a decision not to postpone public hearings until after the summer months, and by municipal elections⁸⁰.

Responding to the unexpected delay in the environmental assessment process, in the summer of 1991 Minister of Transport Jean Corbeil obtained Cabinet agreement to detach terminal redevelopment from initiatives relating to runway development, and proceed on them separately. Mr. Corbeil reported that this reflected the fact that the objective of the project was not the expansion of the terminals but their redevelopment and modernization

76 See *Proceedings*, 8:20.

77 See *Proceedings*, 6:3.

78 See *Proceedings*, 16:47.

79 See *Proceedings*, 8:20.

80 See *Proceedings*, 8:24.

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and, as such, was substantially unrelated to the issue of runway development⁸¹. The Deputy Minister at this time, Mrs. Labelle, added that an options was included in the Request For Proposals to protect the government in the event that a negative assessment by the environmental panel prevented runway development from proceeding.

As the Request For Proposals took shape, policy issues were identified and referred for the Minister's consideration. These issues were outlined for us by Mr. Berigan⁸². They included the scope of the operational mandate to be given to the successful developer; the implications of expanded runway capacity for the amount of investment that would ultimately be required; employee transfer issues; the question of whether the Terminal 3 developer and/or foreign controlled proponents should be eligible; and the factors to be used in evaluating the proposals. As already discussed, the timing of the terminal redevelopment initiatives in relation to the environmental assessment process was addressed after the 1990 announcement.

According to our testimony, representations were received from the developers during the Request For Proposals development period about what should be done, how it should be done, and when it should be done (for details, see the discussion of developers and their lobbyists below).⁸³ Comments provided by the Minister and officials concerning these representations made it abundantly clear, however, that they were recognized for what they were: attempts by the developers to ensure that public interest arguments which would also work to their corporate advantage were fully heard by the Government. The Minister and officials made use of these representations as a source of information and possible options, but affirmed their awareness that it remained the responsibility of public officials, and theirs alone, to determine how the public interest could be served by the requirements of the Request For Proposals. Thus, for example, Mrs. Huguette Labelle advised us that as Deputy Minister of Transport during this period:

I took their phone calls, received them, listened to them...and at the end, they did not have an influence on how - the quality of my advice or how I would advise my ministers, whoever the minister may be.⁸⁴

Minister Corbeil advised us that, in general, he worked with his immediate colleagues, Minister of State for Transport Shirley Martin, Deputy Minister Huguette Labelle and other Transport Canada officials, on a collegial basis to identify the options relating to policy issues for the Request For Proposals as they emerged, and develop positions based on

81 See *Proceedings*, 21:17-18.

82 See *Proceedings*, 6:27.

83 See *Proceedings*, 3:93 and 6:26.

84 See *Proceedings*, 8:65.

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a meeting of minds⁸⁵. He did not specifically relate his close reliance on input from officials to the technical nature of many of the policy issues raised, but the issues specified above suggest this explanation. In addition to his general account of decision-making during the development of the Request For Proposals, Mr. Corbeil also made specific comments on several issues.

A) Structure of Proposal-Seeking Process

An early issue was whether the two-stage process adopted for Terminal 3 should be followed, in which case a call for Expressions of Interest by developers would have identified a field of competitors from which a select group could be invited to respond to a detailed Request For Proposals. The main alternative (assuming a competitive process) was a single stage process, in which developers would respond only to a detailed Request For Proposals.

The Minister believed that it was unnecessary in this case to test the waters to see if developers were interested. This had been amply demonstrated by the unsolicited proposals received by the Department, several of which predated Minister Lewis' October 1990 announcement and indicated that the significance of Terminal 3 as a positive signal had not been lost on developers⁸⁶.

Officials agreed with this assessment. According to Mr. Power, who worked on both the Terminal 3 and the Terminals 1 and 2 projects, Expressions of Interest are used (as was the case in Terminal 3) when officials are not certain of the extent of private sector interest and must decide whether private sector participation should be sought⁸⁷. There was, however, no basis for declaring one system to be more "normal" than the other with respect to the T1T2 process⁸⁸. According to the Deputy Minister at the time, it was desirable to avoid the additional expense of a two-stage process, unless circumstances specifically warranted⁸⁹.

85 See *Proceedings*, 21:7 and 21:20.

86 See *Proceedings*, 21:15-16.

87 See *Proceedings*, 6:10 and 8:23.

88 See *Proceedings*, 3:96.

89 See *Proceedings*, 8:23.

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B) Scope of Development

Early consideration was given to whether the Request for Proposals should invite development only of Terminal 1, only of Terminal 2, or development of both. The boundaries of the property to be offered for lease also had to be decided, as had the extent to which the centre core property of the airport should be included.

According to Minister Corbeil, he and his officials recognized that focused modernization of Terminal 2 had supporters, including the unions, Air Canada and the owners of Terminal 3 (Claridge). The Minister was concerned, however, that the instantaneous loss of twenty-four gates that would accompany the closing of Terminal 1 might impede the functionality of the entire airport. Thus, the Request For Proposals required Terminal 1 to remain open in the short term, but invited proponents who had innovative solutions that would permit the closing of Terminal 1 to submit them.⁹⁰

C) Bid Submission Period

The stipulation of a bid submission deadline of 19 June 1992, 93 days after the 19 March release of the information package for proponents, also reflected direction from the Minister of the day, the Hon. Jean Corbeil. He believed that such a period was normal for projects of this kind and noted that Canadian Airports, in its unsolicited proposal, had expressed readiness to comply with a 60-day submission period⁹¹. In order to ensure that the designated period would exclude no one, it was made clear to the public and interested proponents that requests for extension of the deadline would be considered⁹². Commenting on the ninety-day decision, Mr. Berigan mentioned in addition, the awareness within the government that the initiative had been public knowledge since the original announcement in October 1990, and that serious proponents were already at work on their proposals⁹³.

There appears to have been a perception among certain departmental officials that Price Waterhouse, consultant for the overall development of the RFP, had concerns about the ninety-day submission period. For example, a departmental memorandum claims that the firm took the view that a ninety-day response time could create an impression that the government "is not committed to a fully open and competitive process."⁹⁴

90 See *Proceedings*, 21:18.

91 See *Proceedings*, 21:34-35.

92 See *Proceedings*, 21:18.

93 See *Proceedings*, 6:9.

94 See *Proceedings*, 6:33.

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We were, however, advised by Mr. John Simke, who led the Price Waterhouse team during the development of the Request For Proposals, that Price Waterhouse advised departmental officials that 90 days was at the short end of the range of acceptable bid submission periods, given the size and complexity of the project. Mr. Simke indicated, further, that the selection of a proposal submission deadline is very much a judgement call, and that there is no standard basis for recommending, for example, 60 days over 90 or 120, or 120 over 60 or 90.⁹⁵

Officials themselves were cautious about expressing opinions on a matter that reflected political direction. Mr. Ran Quail, who was to lead negotiations with the successful proponent for several weeks preceding his appointment as Deputy Minister, Public Works and Government Services, did however agree that a ninety-day time-frame was "tight"⁹⁶.

D) Evaluation Criteria

The evaluation criteria were developed somewhat separately from other elements of the Request For Proposals. Mr. Victor Barbeau told us that Mr. Ron Lane, then regional director of airports in Atlantic Canada, was selected to head the committee dedicated to the evaluation process specifically because of his detachment from the Pearson Airport file⁹⁷. Mr. Lane described his basic functions, leading up to the issuing of the Request For Proposals, as being to establish the evaluation methodology, establish an evaluation committee, develop the evaluation criteria, and prepare the evaluation documentation⁹⁸.

After undertaking the assignment in January of 1992, an early task of Mr. Lane and his group was drafting Chapter 7 of the RFP, the section informing proponents how the evaluation would be carried out and according to what criteria. According to Mr. Berigan, a consultative process was first established to review the Terminal 3 experience and to have general headings scrutinized in interdepartmental consultations or by Price Waterhouse⁹⁹. The numerical indicators of the respective weights of the various evaluation criteria are not set out in the RFP. Instead, criteria are grouped into three classes: those of "primary importance," those of "marginally less but substantial importance," and those of "lesser but significant importance"¹⁰⁰. We understand that the criteria and their numerical weighting

95 See *Proceedings*, 15:9.

96 See *Proceedings*, 15:65.

97 See *Proceedings*, 2:45.

98 See *Proceedings*, 6:48.

99 See *Proceedings*, 6:35.

100 *Request For Proposals*, p. 48.

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were defined in detail during the interval between the issue of the RFP and the bid submission deadline¹⁰¹.

As noted above, the Minister participated with officials in establishing the factors to be used in assessing the proposals. As well, according to Mr. Lane, ministerial approval for the composition of the evaluation committee was sought and received, at the Request For Proposals drafting stage. At a later stage, the complete evaluation documentation, including weightings for the various criteria, was supplied for ministerial review. However, the Minister made no changes. Indeed no intervention by the Minister occurred at this juncture¹⁰², or at any other time.

E) The Document Room

As the Request For Proposals was developed, officials also proceeded with the assembly of reference documents to be made available to proponents. In the course of this exercise, a puzzling decision was made that was to have serious consequences at a later stage of the process, when the details of the Pearson agreements were being negotiated. During negotiations, it would be realized that what was not in the room, rather than what had been put into it, was the central significance of the document room.¹⁰³

Officials decided not to include a 1989 document entitled "Guiding Principles For Air Canada Lease Negotiations, Terminal II" between the Department (signed by Glen Shortliffe, Deputy Minister at that time) and Air Canada. The document provided that, when the existing lease of Terminal 2 expired in 1997, it would be replaced with a twenty-year lease, renewable for two additional ten-year periods. It also contained a series of other provisions, including a basis for determining Air Canada's rental rates and the portability of the arrangement if Transport Canada were to sell or assign Terminal 2.

According to Mr. Berigan, departmental officials believed that Air Canada's support for the Paxport unsolicited proposal reflected an abandonment of its adherence to the "guiding principles". They claimed that in their consultations over the contents of the Request For Proposals, Air Canada had not suggested including the guiding principles. Instead, Air Canada ratified what would become the language of the Request For Proposals, which requires proponents to recognize both Air Canada investments in the terminal (and to provide for appropriate compensation) and the fact that Air Canada had a lease extending to 1997. Officials thus proceeded on the basis that the "guiding principles" document had

101 See *Proceedings*, 6:58.

102 See *Proceedings*, 6:52.

103 See *Chapter V*.

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no legal status, even though they acknowledged awareness of a 1991 letter to Mrs. Labelle, Deputy Minister, reiterating Air Canada's adherence to the 1989 arrangement¹⁰⁴.

3. Outside the Department

During development of the Request For Proposals, the development team and those who directed it talked to various parties with an interest in Pearson, sometimes at the initiative of officials and sometimes in response to requests.

A) Local Airport Authorities

The government's intention to seek developers' proposals for refurbishing Terminals 1 and 2 provoked predictable criticism from those attempting to establish a Toronto Local Airport Authority. At a December 1990 meeting with the Minister, representatives of the five regional councils involved in that attempt reiterated their earlier written request for the federal government to slow down to allow a local airport authority to be put in place. Minister Lewis responded that terminal redevelopment was a top priority and could not be delayed. According to Mr. Gary Harrema, who, as Chair of the Durham Regional Council, was present at the meeting, the Minister stated that he had heard that municipal councils were not in agreement, and that agreement would need to be confirmed through resolutions duly passed by all of them¹⁰⁵.

Local officials wishing to develop an airport authority for Pearson had differing impressions of the Minister's position, however. Mr. Gardner Church, Ontario's Deputy Minister for the Greater Toronto area, believed that the December 1990 meeting made it clear that the federal government would not recognize a Toronto local airport authority before Terminals 1 and 2 had been leased to developers. On the other hand, Mr. Gerry Meizner, former President of the Metropolitan Toronto Board of Trade, believed that Minister Lewis had stated that he himself would be first in line to recognize a local airport authority, as soon as it had the support of the regional and local municipalities¹⁰⁶.

Minister Lewis' recollection of his 7 December 1990 meeting with representatives of the Greater Toronto Area, supported by references to departmental memoranda summarizing those proceedings, was that it was made absolutely clear that the door to recognition of a local airport authority remained open. According to the memoranda, a local airport authority was not ruled out and the Minister indicated his willingness to examine proposals, while at the same time affirming his determination not to delay release of a

104 See *Proceedings*, 6:44.

105 See *Proceedings*, 5:15-16-17.

106 See *Proceedings*, 5:39.

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Request For Proposals. As well, GTA representatives were asked for input to the process of developing the Request For Proposals¹⁰⁷.

We have seen no evidence of substantive input. Indeed, Mr. Church told us that there was very little communication in response to Minister Lewis's invitation for input. According to Mr. Church the next communication to the local organizing committee was a year and a half later in the form of "a brown envelope advisory from a disgruntled employee in Transport Canada that a call for proposals was about to hit the street"¹⁰⁸.

News of the government's intention to call for proposals seems to have provoked a flurry of activity at the regional level. Representatives of the Greater Toronto Area convened a meeting in February 1992 at which, according to Minister Corbeil, they conveyed the impression that they had only recently become aware of the federal local airport authority policy and demanded the indefinite postponement of the terminal redevelopment project. At this meeting, federal representatives were informed of a provincial government attempt to sponsor the formation of a local airport authority, an initiative that departed substantially from the basic principles of federal policy in that, for example, such an authority would be not a private group, but a means whereby the Government of Ontario could gain access to airport revenues¹⁰⁹.

According to GTA officials, the meeting did not resolve any of their major differences with the federal government. One of the federal ministers present, the Hon. Michael Wilson, did, however, say that if the airport authority could get its act together a bid from it would be welcome¹¹⁰. GTA representatives concluded that the inclusion of local political representation within a local airport authority was seen as an insuperable problem by the federal government. This was the major issue on which they perceived a disagreement with federal requirements¹¹¹. They also told us that they disagreed with the federal perception that action was urgently needed, given that the recession was now well underway and demand on the airport facilities was declining.

The meeting appears to have led the Ontario government to decide to underwrite, if necessary, a proposal for the redevelopment of the terminals, and to heighten its efforts towards the formation of a local airport authority. GTA officials described this move as creating "a great deal of excitement between the federal government and the province".¹¹²

107 See *Proceedings*, 4:16.

108 See *Proceedings*, 5:17.

109 See *Proceedings*, 21:53-54.

110 See *Proceedings*, 5:24.

111 See *Proceedings*, 5:21.

112 See *Proceedings*, 5:24.

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According to Mr. Church and local politicians, the federal decision to proceed with a Request For Proposals also caused the emerging consensus among municipalities to disintegrate, and resulted in at least two competing prospective authorities. Indeed, according to Mr. Church, the federal government was attempting at this time to ensure that there was no cohesive Toronto position. However, no indication was provided of how this was being done¹¹³.

According to these officials, at this time the City of Mississauga broke ranks with the Greater Toronto Area Heads of Council Committee which had been promoting the formation of a local airport authority, and began to champion private sector involvement in advance of the formation of any such authority¹¹⁴. Mississauga's mayor, Hazel McCallion, suggests a somewhat different position. Mayor McCallion claims that her priority at the February 1992 meeting was to avoid any delay in renovating the two terminals, especially Terminal 1, which was in need of immediate repair¹¹⁵. Her testimony also suggested that she had opposed the 1992 local authority initiative from the start:

After it was announced that the government was proceeding with a proposal call on Terminals 1 and 2, the province became very interested in the airport. And so did the past President of the Metro Board of Trade, Mr. Bandeen, and proceeded again without any consultation with the City of Mississauga to set up what I called an illegal airport authority made up of Mr. Bandeen, Mr. Meizner, and members of the Metro Board of Trade¹¹⁶.

Right up to the issue of the Request For Proposals, the federal view continued to be that no organization in Toronto met the requirements for recognition as a local airport authority, from which input could appropriately be sought¹¹⁷. The central issue about which municipalities disagreed, according to Minister Corbeil and federal officials, was Mississauga's insistence that the Toronto Island Airport be included within the jurisdiction of a Local Airport Authority. **The major concern about an attempt to transfer more than one airport at a time was explained to us by Mr. Michael Farquhar, then head of Transport Canada's Airports Transfer Task Force. Such an attempt could have resulted in the successful transfer of Toronto Island Airport but failed with respect to Pearson. This would have created what was seen as a ludicrous situation: a local airport authority whose essential purpose was to manage Pearson, but which would be**

113 See *Proceedings*, 5:14 and 15:18.

114 See *Proceedings*, 5:24.

115 See *Proceedings*, 20:8.

116 See *Proceedings*, 20:7.

117 See *Proceedings*, 21:54 and 8:27.

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able to manage only Toronto Island.¹¹⁸ Mississauga's position also raised practical problems because Toronto Island airport was not fully owned by the federal government but functioned under the tripartite ownership of the federal government, the City of Toronto (which opposed its transfer) and the Toronto Harbour Commission¹¹⁹.

Federal officials' assertions that local officials within the Toronto region significantly disagreed over the establishment of a local airport authority are supported by the mayor of Mississauga's characterization of the 1992 local airport authority initiative and her testimony concerning her position on the inclusion of Toronto Island Airport. According to Mayor McCallion, Mississauga's support for a local airport authority remained conditional on the inclusion of Toronto Island Airport until 1994, and was only changed because it was clear that the City of Toronto was not going to agree¹²⁰.

B) Air Canada

During the Request For Proposals development period, Air Canada had important direct involvements with both Transport Canada and developers. In addition, its influence within the Air Transport Association of Canada was apparent in the latter's interventions in the Pearson terminal redevelopment issue.

As the RFP development process unfolded, Air Canada's position on the need for terminal redevelopment and its appropriate scope underwent some noteworthy changes. According to Mr. Dominic Fiore, Senior Director, Corporate Real Estate, Air Canada during the Pearson process, in 1990 the recession hit the airline business "like a tidal wave"¹²¹. Air Canada responded with a general program of cost-cutting and downsizing, which included the postponement of phase 2 of its Terminal 2 refurbishment program until company finances improved, and a reduction in the scope of plans.

The October 1990 announcement that a call would be issued for proposals from private sector developers for the redevelopment of Terminals 1 and 2 came, according to Mr. Fiore, in the early stages of Air Canada's downsizing. In response to the government's request for input, Air Canada, in March of 1991, wrote affirming its willingness to provide information and listing a series of requirements to be incorporated in the Request For Proposals. The letter continued, however: "we are not convinced that the transfer of the

118 See *Proceedings*, 5:71.

119 See *Proceedings*, 20:9.

120 See *Proceedings*, 20:15.

121 See *Proceedings*, 12:76.

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terminal to a third party developer-manager is the only or most suitable vehicle to address its future"¹²².

Also in March 1991, Air Canada was advised by Transport Canada that a competitive bidding process required the company to terminate the relationship with Paxport that had involved Air Canada's support for Paxport's unsolicited proposal in the previous year. In April 1991, Air Canada, in turn, advised Paxport of its withdrawal from their joint initiative to redevelop Terminal 2, and that all developers would be dealt with equally and at arms' length for the period of the competitive process¹²³.

Questioned about a Paxport memorandum indicating an Air Canada official had agreed to continue informal contacts, Air Canada witnesses affirmed that Paxport had had no privileged relationship with the airline after April 1991¹²⁴. This view was echoed by Raymond Hession, President of Paxport during this period, who advised us that thereafter Air Canada had dealt with Paxport strictly on an arm's length basis¹²⁵.

This position was confirmed in responses to questions about an internal Paxport document, on a 12 July 1991 meeting, at which Air Canada officials directly responsible for airport development had stated their preference for Paxport, should there be private sector development, and that Air Canada would not be dealing with other developers¹²⁶. The Air Canada representatives who appeared before us were not present at the 12 July meeting, and were unable to explain what their colleagues at that time had intended¹²⁷. Mr. Fiore stated that he did not communicate any preference for Paxport in his dealings with the company.

Later in 1991, Air Canada gave Transport Canada its moderated phase 2 plan for Terminal 2 (its major input to the development of the Request For Proposals) along with supportive documentation for inclusion in the document room. This material included a statement of the principles for leases which, according to Air Canada representatives, reflected the 1989 Guiding Principles¹²⁸. It included references to the rental rate agreement, protection of Air Canada's equity in Terminal 2, scope of development, and control over operational areas¹²⁹.

122 Pierre Jeannot to Doug Lewis, July 1990, Committee document LA 000484.

123 See *Proceedings*, 12:91.

124 See *Proceedings*, 12:92.

125 See *Proceedings*, 9:29.

126 See *Proceedings*, 9:33.

127 See *Proceedings*, 12:95.

128 See *Proceedings*, 12:101.

129 See *Proceedings*, 12:100.

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C) The Air Transport Association of Canada

An exaggerated form of Air Canada's response to the government's stated intention to seek private sector proposals for Terminals 1 and 2 came from the Air Transport Association of Canada, the industry association of commercial aviation operators. This association, according to Mr. Gordon Sinclair (its President during this period), represents a membership accounting for about 95% of commercial aviation revenues in Canada¹³⁰.

According to Mr. Sinclair, a 6 September 1991 letter to Minister Corbeil expressed a substantial consensus among association members that the redevelopment of Terminals 1 and 2 did not respond to any demand from the airline industry. The letter argues that it would be foolish to seek proposals to redesign and renovate a terminal that Air Canada had just refurbished and goes on to argue that the recession was likely to create a five-year pause in passenger volume at the airport, making major expansion unjustified. Moreover, the pace and scope of development should be determined by the anchor tenant. The letter argues, furthermore, that development and expansion of terminals by private sector operators is not in the interest either of airlines or consumers, who would have to absorb the costs¹³¹.

A resolution expressing substantially the same sentiments was passed by the Association on 12 November 1991 and subsequently communicated to the Minister of Transport. Finally, on 5 March 1992, Mr. Sinclair sent a second, equally emphatic letter to the Minister, on behalf of the association. It argued that monopoly control over airport terminals by a private sector operator would inflict major injustice upon the travelling public¹³².

According to Mr. Sinclair, the letters were acknowledged but no substantive response arrived from the Minister of Transport until May of 1992, after the Request For Proposals had been released. The response confirmed the Minister's belief that terminal planning and development was warranted by passenger growth forecasts and should go ahead at that time¹³³.

D) The Developers and Their Lobbyists

During the development period for the Request For Proposals, the consortiums intending to submit proposals competed with one another to recruit support from third parties believed to have potential influence, and to obtain an information edge with respect to the plans and requirements of the government. They also sought to persuade politicians and

130 See *Proceedings*, 13:75.

131 See *Proceedings*, 13:76.

132 See *Proceedings*, 13:79.

133 See *Proceedings*, 13:82.

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elected officials of the merits of bidding process characteristics and proposal requirements that they believed would operate to their advantage (or, conversely, to the disadvantage of rival consortiums).

(i) Canadian Airports

The Canadian Airports consortium was made up of British Airports Authority PLC in collaboration with the Toronto-Dominion Bank, Cogan Corporation, Ellis-Don Ltd., J.J. Barnicke, and the Public Service Pension Board. Its purpose was essentially to facilitate the application of British airport development expertise in Canada and the United States. Since this consortium dropped out of the process before the Request For Proposals was issued, we did not meet its representatives.

In order to ensure we had full knowledge of any lobbying in relation to the Pearson agreements, we did, however, invite Mr. Fred Doucet to appear before us. During the proposal development period, Mr. Doucet, as President of the lobbying firm Fred Doucet Consulting International, had acted for the Canadian Airports consortium, having initially been retained by Mr. Edwin Cogan, an international developer, in March 1990.

According to Mr. Doucet, his firm remained registered as the government relations consultant for Canadian Airports in December 1992, when the government announced its selection of a best overall acceptable proposal. The firm's services consisted of monitoring developments within the government and providing advice and counsel relating to the consortium objective of competing for the T1T2 terminal redevelopment contract¹³⁴. The major activity took place before December 1991, at which time the consortium suspended its operations in Canada, with a public statement to the effect that the slow pace of the Request For Proposal process had led it to doubt whether it would actually be issued¹³⁵.

We were interested to learn, as well, that on 1 February 1993 Paxport would sign two contracts, to become effective when the Terminals 1 and 2 agreements were concluded, with Fred Doucet Consulting International. These contracts provided for government relations services relating to the devolution of Canadian airports elsewhere in Canada, and to work at airports outside Canada. They would have involved payments of \$8,700 and \$8,000 per month respectively, over a ten-year term (50% of this revenue would have gone to a firm sub-contracted by Mr. Doucet).

134 See *Proceedings*, 16:55.

135 See *Proceedings*, 16:56.

Airport Terminals Development Group (Claridge)

(i) The Consortium

The Airport Terminals Development Group (ATDG or Claridge) consortium was a joint venture between Claridge Properties and LAH, a subsidiary of Lockheed dedicated to the management of airports. It had grown out of the consortium that was the principal owner of Terminal 3, in which Claridge Properties had by stages replaced the firm of Huang and Danczkay, the original developers of Terminal 3, replacing them fully in April of 1992¹³⁶.

Mr. Coughlin, President, Claridge Properties Ltd., told us that Claridge had originally bought a share in Terminal 3 only because of the government's announced intention of privatizing Terminals 1 and 2, thus creating the possibility that Claridge could eventually be involved in operating all three terminals. This was, and remained, the company's ultimate objective.

During 1991, however, Claridge's immediate focus was on persuading the government to close Terminal 1 and move its traffic to Terminal 3. This would have solidified the traffic volume through that terminal and provided an important benefit to Canadian Airlines, whose rental payments would have fallen with the broadening of the tenant base¹³⁷. Mr. Coughlin acknowledged, however, that "the government took a much longer term perspective," focusing on the need for Pearson to be developed. He further volunteered the view that, given the needs of Air Canada, "they were probably right"¹³⁸.

Mr. Coughlin also told us that during this period Claridge was fully aware of the government's intention to issue a Request For Proposals: "we certainly had knowledge that it was coming, and we were certainly prepared"¹³⁹.

Even though the Claridge proposal was ultimately not selected by the government, Mr. Coughlin expressed general approval of the requirements established by the Request For Proposals. He considered that a two-stage proposal process, as had been employed with respect to Terminal 3, was not needed and that the 90-day proposal preparation period was reasonable, given the possibility of an extension¹⁴⁰. He also applauded the fact that the

136 See *Proceedings*, 15:81.

137 See *Proceedings*, 12:71.

138 See *Proceedings*, 17:95.

139 See *Proceedings*, 17:72.

140 See *Proceedings*, 17:74.

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Request For Proposals had called for creativity and innovative solutions from the developers, rather than prescribing in detail what should be done.

(ii) Its Lobbyists

Mr. Harry Near, Earnscliffe Strategy Group, told us that when Claridge replaced Huang and Danczkay, for which Earnscliffe had worked since May 1989, it had retained his firm on a monthly retainer of \$5,000 for government relations work (a second contract, at \$4,000 per month, dealt with communications advice)¹⁴¹.

The principal services provided during the Request For Proposals development period, according to Mr. Near, were the monitoring of developments within the government and the provision of advice on the shape of the emerging Request For Proposals and the process to be in place upon its release. Most of this activity took place in the spring of 1992¹⁴².

Once it became clear that there would be a competitive process involving the issue of a Request For Proposals, the monitoring activity was expanded to include an effort to convince the government that proponents should be evaluated on the basis of their financial capacity to redevelop and operate the terminals, as well as on operational criteria¹⁴³.

We were, as well, advised by Mr. Near that there had been an intensely competitive relationship between Claridge and Paxport, right up to the announcement of a best overall acceptable proposal: "Figuratively, we were trying to kill each other"¹⁴⁴.

We also heard from a second firm retained by Claridge, the Capital Hill Group. Mr. Herb Metcalfe, a senior partner, advised us that his group had commenced work on the Pearson Airport file in August of 1991, on a monthly retainer of \$10,000¹⁴⁵. This arrangement had continued up to the time of our hearings.

Mr. Metcalfe indicated that, during the time of the RFP development, his firm undertook to monitor developments within the government in order to identify key concerns and issues that would assist Claridge in shaping its proposal¹⁴⁶. As well, during the early

141 See *Proceedings*, 15:85.

142 See *Proceedings*, 15:82.

143 See *Proceedings*, 15:82.

144 See *Proceedings*, 15:100.

145 See *Proceedings*, 15:116.

146 See *Proceedings*, 15:121.

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phase of the Request For Proposals development period, an unsolicited proposal was submitted to the government and Capital Group provided assistance as "we shopped that proposal around town." It attempted to persuade the government to mothball Terminal 1 and transfer the traffic to Terminal 3.¹⁴⁷

Paxport

A) The Consortium

By the time the Request For Proposals was released, the Paxport consortium had evolved considerably from the 1989 joint venture between the Matthews Group and Bramalea Inc. It now comprised eight firms: Matthews Group Ltd. with 35% ownership, along with Allders International, CIBC Wood Gundy Capital Inc., Ellis-Don Inc., Bracknell Corp., Agra Industries Ltd., NORR Partnership Ltd., and Sunquest Vacations Ltd.

During the development of the Request For Proposals, Paxport President Raymond Hession made a number of representations to government officials on issues relating to both the RFP process and the substance of the request.

An issue that received early attention was the structure of the proposal process, and the respective merits of a one-stage bidding process and the two-stage process employed for Terminal 3. Attending, on behalf of Paxport, a meeting with departmental officials on 15 April 1991, Mr. Hession advocated a one-stage process on the grounds that a call for Expressions of Interest would be unnecessary and costly, given that three potential bidders (enough for a fair competition) were already known¹⁴⁸.

At the same meeting, Mr. Hession also advocated the use of a "contract definition" approach to the proposal call; this would have involved the definition of the contract by the proponents, in close collaboration with the government. Such an approach, we were told is sometimes used by the government where a very limited source of supply for goods or services makes it advantageous for government and business to work together to create a new supply capability¹⁴⁹. In addition, a case was made for the exclusion of municipalities and prospective local airport authority candidates from the submission of proposals.

Questioned on the final form of the Request For Proposals, Mr. Hession was strongly positive about what he termed "a first-class proposal call." He commended, in particular, a

147 See *Proceedings*, 15:130.

148 See *Proceedings*, 8:92.

149 See *Proceedings*, 8:93.

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clear statement of objectives, unambiguous evaluation criteria, clear definition of the problems, and openness to innovative solutions from the private sector¹⁵⁰.

Paxport also cultivated a relationship with Air Canada during this period. We reviewed an internal Paxport memorandum written by Mr. Hession, dated 21 March 1991, which referred to a meeting between himself and an Air Canada official and to the continuing "strong and productive" relationship between them. This was immediately prior to the Air Canada's submission of its input into the Request For Proposal development process. The relationship had ceased, however, to involve formal collaboration relating to Paxport's 1989 unsolicited proposal and would, on Air Canada's part, have reflected Air Canada's continuing interests¹⁵¹. According to a somewhat ambiguous statement by Mr. Hession, the frequency of meetings with Air Canada had begun to diminish during the summer of 1991, and Air Canada had begun to explore possibilities with competing developers¹⁵².

B) Its Lobbyists

Mr. Bill Neville advised us that he had served as the overall coordinator for lobbying on behalf of Paxport from 23 January 1990 until the end of August 1993, on a retainer of \$4,000 per month plus expenses¹⁵³. During the final months of this contract, in June 1993, he headed Ms Campbell's transition team following her assumption of the prime ministership, among other responsibilities providing advice on the governmental reorganization and the shuffle of deputy ministers that saw Mrs. Labelle transferred to the Canadian International Development Agency and Mrs. Jocelyne Bourgon become Transport's new Deputy Minister¹⁵⁴. Mr. Neville reported to us that he was also on retainer to Air Canada for advice on matters not related to the T1/T2 redevelopment project from September 1991 to August 1994¹⁵⁵.

According to Mr. Neville, during the preparation period for the Request For Proposals his initial focus was on trying to convince the government to proceed as expeditiously as possible¹⁵⁶.

Subsequently, representations were made on a number of the policy issues that arose in RFP development, including the length of the bidding time-frame. Paxport's support for

150 See *Proceedings*, 9:53-54.

151 See *Proceedings*, 9:29-30.

152 See *Proceedings*, 9:34.

153 See *Proceedings*, 16:11-12.

154 See *Proceedings*, 16:21.

155 See *Proceedings*, 16:15.

156 See *Proceedings*, 16:12.

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a ninety-day period, seen as "nothing more than the standard," reflected its belief that it had an advantage over most competitors because of having done more front-end preparatory work¹⁵⁷. A second issue, on which representations were made to Minister Corbeil, among other elected officials, was the structure of the bidding process. Paxport, as has been seen, favoured the elimination of a call for Expressions of Interest¹⁵⁸.

As well, a February 1992 memorandum from Mr. Hession to Mr. Neville sets out a broad strategy that would have applied to the late RFP development and subsequent evaluation stages. The purpose, according to Mr. Hession, was to ensure that every mayor, economic development commissioner, and regional chairman, along with members of the airport task force recently established by the Mayor of Toronto, would receive a personal briefing on Paxport's proposals¹⁵⁹.

We also heard from Mr. Andrew Pascoe, of A.D. Pascoe and Associates. He indicated that he had contracted to represent Paxport in contacts with the Ontario government, regional and municipal governments, business groups, organized labour and other local organizations during 1992 and 1993, but had had no dealings with Ottawa during this period¹⁶⁰. The primary purpose of these contacts was to create as broad a base of support as possible for the redevelopment of Terminals 1 and 2, and to ensure that the merits of the Paxport proposal were known by all parties involved in the issue.

Morrison Hershfield

A fourth developer, Morrison Hershfield, prepared a terminal redevelopment proposal during this period. As will be seen below, however, this activity did not relate to the Request for Proposals being developed at this time.

157 See *Proceedings*, 16:23.

158 See *Proceedings*, 16:31.

159 See *Proceedings*, 8:90.

160 See *Proceedings*, 16:39.

4. The Release of the Request for Proposals

Developments in the circumstances of Pearson Airport during the preparation period for the Request For Proposals raised two major questions requiring ultimate resolution by the Minister and cabinet, as of early 1992¹⁶¹.

The resistance of Air Canada and other airlines to development that might result in increased terminal rents had been heightened considerably by the recession, and had resulted in calls for (at a minimum) the delay of significant development.

According to departmental officials, however, it was felt important to move forward on the project, given the long-term strategic plan to optimize Pearson Airport and the five to seven year time-frames involved in development¹⁶². As well, while the recession eased immediate pressures for expansion, it also generated a new need, referred to with increasing frequency in internal departmental documents from mid-1991 forward and figuring prominently in the minister's announcement of the Request For Proposals. This was the need to provide an economic stimulus to the Toronto area, and create jobs in the construction industry, which had been severely affected by the recession¹⁶³. A final consideration, stressed by Minister Corbeil during his appearance, was that additional capacity was not the primary focus of the project, although it was an element, in view of passenger forecasts¹⁶⁴. This view was echoed by officials such as Mr. Power, according to whom modernization of the existing terminals was the central focus, bearing in mind that modernization should be undertaken before the reductions in passenger capacity created by other construction resulted in overall problems of congestion¹⁶⁵.

A second issue was raised by continuing attempts to establish a Toronto Local Airport Authority: should the issue of a Request For Proposals be delayed in the expectation, or hope, that agreement might be reached between the Greater Toronto Association or an alternative and the Minister on the issue of recognition? This prompted two questions: (1) was recognition likely in the foreseeable future and, if not, (2) would the private sector redevelopment of Terminals 1 and 2 seriously limit the scope of a Local Airport Authority if and when one was eventually formed?

As has been seen, as of early 1992, Minister Corbeil and most Transport Canada officials believed that little progress had been made in resolving the disagreement between

161 See *Proceedings*, 6:27.

162 See *Proceedings*, 8:15-16; 2:44; 6:30.

163 *Memo from Transport Canada*, 1993, Committee document 1-1# 0061.

164 See *Proceedings*, 21:26.

165 See *Proceedings*, 6:37.

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Mississauga and other municipalities with respect to whether the management of the Toronto Island Airport should be part of the initial mandate of a local airport authority. There was thus little optimism about early recognition of such an authority.

Reflecting advice from more specialized levels in the department, the Deputy Minister at this time, Mrs. Labelle, believed that a local airport authority formed after the leasing of Terminals 1 and 2 to a private sector firm would retain significant responsibilities. Among those mentioned were the allocation of airlines among terminals, the management of access to transportation on the ground, decisions relating to the development of sector 4 (a parcel of land adjacent to the terminals which is available for future terminal development), the management of the remaining airport lands and possibly the resolution of runway development issues¹⁶⁶.

Minister Corbeil sought authorization from cabinet in early 1992 to proceed directly with the issue of a Request For Proposals. Documentation for this was, as has been seen, at an advanced level of development at this point, enabling its public release on 16 March 1992, some seven weeks after the green light was received from cabinet.

The fifty-page Request For Proposals document released on 16 March 1992 provided a detailed review of development objectives, considerations and requirements established by the government in some 12 areas, ranging from traffic forecasts and plans for runways to the various parts of the terminal buildings. The Request also set out the structure of management and operations that would apply, the business arrangements, and eligibility requirements. Finally, it described the structure and content that would be required in proposals, and the evaluation criteria to be applied to them, and added a series of miscellaneous requirements, such as compliance with the *Competition Act*, and supplementary information.

An appendix to the Request For Proposals detailed the steps to be taken by proponents and applicable deadlines, including the proposal submission deadline of 1500 hours, 19 June 1992. At the time of the announcement, it was indicated that requests for an extension of the deadline would be considered.

166 See *Proceedings*, 8:26.

5. Observations and Conclusions

A) Process

During our hearings on the development of the Request For Proposals, we continued the practice of systematically asking officials who had had significant responsibilities at each stage to state under oath their views on the process. In particular, we asked them to state their personal judgments on whether they had been subjected to requirements for speed that compromised their work, whether their work had been subject to interference from the political level, whether lobbyists had influenced their decisions and whether, more generally, they were satisfied that the requirements of due process had been met.

Without exception, responsible officials endorsed the process in which they had participated. In particular, the process up to the time of the release of the Request For Proposals was endorsed by the Hon. Jean Corbeil, Minister of Transport during this period¹⁶⁷; Mrs. Huguette Labelle, Deputy Minister¹⁶⁸; Victor Barbeau, Assistant Deputy Minister, Airports¹⁶⁹; Gerald Berigan, Director General responsible for the Request For Proposals development process¹⁷⁰; and Ron Lane, Chairman of the evaluation process and responsible for the development of evaluation criteria¹⁷¹.

Similar endorsements were also obtained from William Rowat, the senior Privy Council Office official who had participated in the project during this period¹⁷²; Mr. Mel Cappe, the senior Treasury Board participant¹⁷³; and John Simke, who represented Price Waterhouse, the consulting firm that had worked on the development of the Request for Proposals¹⁷⁴.

Furthermore, we posed the same questions to those who had worked on the project teams managed by the officials listed above. The result was the same: all endorsed the process as being fully in compliance with the requirements of due process and public service norms.

167 See *Proceedings*, 21:10; 21:66-68-69-72; and 21:97.

168 See *Proceedings*, 8:39.

169 See *Proceedings*, 3:42.

170 See *Proceedings*, 6:29.

171 See *Proceedings*, 6:80.

172 See *Proceedings*, 11:30.

173 See *Proceedings*, 14:60.

174 See *Proceedings*, 15:12.

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A useful general assessment of the impact of lobbyists on the development of the Request For Proposals, was provided by Minister Corbeil. His view was that a politician who cuts out all communication is not doing his job, and the fact that lobbyists representing special interests were heard along with everyone else enabled a better Request For Proposals to be developed. It remains the Minister's responsibility, however, to make a good decision after hearing representations¹⁷⁵. After twenty years in politics, Minister Corbeil was fully confident in his ability to do this. Looking back on the entire process which ultimately produced the Pearson Agreements, Minister Corbeil declared:

I solemnly state that the agreement respecting Terminals 1 and 2 of Toronto's Lester B. Pearson International Airport was reached in early August 1993 in absolute compliance with the laws that govern us and with the principles of honesty, probity, integrity and equity that characterized our institutions. I also state, Mr. Chairman, that the public interest guided the actions of all participants in this collective success of which I am particularly proud.¹⁷⁶

In the course of our hearings, we found no evidence to contradict participants' affirmation of the complete integrity of the process of preparing the Request For Proposals for the redevelopment of Terminals 1 and 2. The safeguards in the process to ensure that private interests do not override the public interest in the course of implementing public policy were observed, to the letter.

B) Policy

As has been seen, the Minister's decision to proceed with the release of a Request For Proposals required a review of changes in the circumstances of Pearson Airport to determine that nothing had happened that would call into question the 1990 policy decision to proceed with redevelopment by means of a long term lease to a private sector consortium of Terminals 1 and 2. In our view, the reasons raised by the Minister and officials for proceeding remain compelling.

Indeed, the evidence suggests that no one was arguing against development. The need for modernization of the terminals was undeniable; the only arguments were about its pace, and the appropriate role of the private sector.

(i) The Airlines

The airline's central objection was to the pace of development, which does not imply an objection to the involvement of private sector developers. Indeed, Air Canada had itself

175 See *Proceedings*, 21:69-70.

176 See *Proceedings*, 21:87 and 21:10.

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not long before this period worked in partnership with Paxport to jointly submit an unsolicited proposal.

The illogic of tying the two concerns is illustrated, in our view, in the letters submitted to the Minister by the Canadian Air Transport Association, where protests against the involvement of private sector developers are combined with arguments that Air Canada, a private sector firm, should be able to control development.

The logical response to the airlines' concerns was to place requirements in the Request For Proposals to ensure that development would not impose excessive costs on the airlines, and would take place at a pace that they and other tenants could afford. This was done. Under the "Pricing Strategies" sub-heading of the section devoted to management and operations, the Request For Proposals required proponents to provide a detailed description of fees and charges to be levied upon airlines, and to include:

the role that airlines will be able to play in controlling or influencing fees and charges that will be levied on them, and the role that airlines will play in deciding on the scope and timing of developments that will impact on fees and charges.¹⁷⁷

As well, it was indicated that the evaluation of proposals would specifically address the degree to which they accommodated the expectations of clients and business associates.¹⁷⁸

Our conclusion, confirmed by the eventual ratification of the Pearson agreements by Air Canada, is that the concerns of the airlines were fully and satisfactorily addressed in the Request For Proposals.

(ii) Local Airport Authority Advocates

The local airport authority objection was also not a protest against development. Indeed, officials of Greater Toronto Area involved in the attempt to form a local airport authority consistently affirm that development of the terminals was needed. This position was clearly expressed in a 6 March 1992 letter from Mr. Alan Tonks, Chairman, Metropolitan Toronto Council to the Hon. Michael Wilson, at this time Minister for International Trade, Industry, Science and Technology and senior political minister for the Toronto area. After affirming his support for a local airport authority while noting that difficulties continued to beset the attempt to form such an authority in the Toronto area, Mr. Tonks wrote:

177 *Request For Proposals*, p. 25.

178 *Ibid.*, p. 48.

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These problems may be quickly solved, but other matters such as runway and terminal capacity need to be addressed now. Privatization of T1 and T2 should, in my opinion, proceed as long as the future option for a viable authority is not precluded.

As has been seen, a prospective local airport authority had yet to be established as of 1992, and no significant progress had been made in forming one despite a clear indication in 1990 of the government's intention to proceed with the modernization of the terminals. Establishing a local airport authority to guide development was thus not a practical option at the time.

Delaying development while awaiting the emergence of a local airport authority would have gone against the Minister's own well-founded conviction that development was needed immediately (especially in Terminal 1). It also would have drawn strong opposition from the Mayor of the municipality in which Pearson was located, who was calling on the government either to repair Terminal 1 or board it up.

Delay was, furthermore, unnecessary in order to ensure that terminal redevelopment would not preclude the establishment of a local airport authority. As has been seen, Minister Corbeil was assured by officials that the terminal redevelopment project by no means rendered the establishment of a local airport authority unnecessary, since substantial managerial responsibilities could still be assumed. Furthermore, the Request For Proposals required that the ground lease for the terminals be transferable to a local airport authority, meaning that a recognized authority would acquire substantial rights relating to the project itself¹⁷⁹.

The imprecision of the policy framework on recognizing local airport authorities inherited by Minister Corbeil when he assumed the Transport portfolio, undoubtedly contributed to the problems that arose with the announcement of the government's intention to go ahead with a Request For Proposals. The Minister's resistance to a local airport authority sponsored by the provincial government was directly based on the 1989 "Supplementary Principles" document, which defined an LAA as an organization representing local business and community interests. The 1987 policy, however, had appeared to open the door to direct provincial participation by defining local airport authorities much more widely, and including provincial governments on the list of possible participants. Because the 1989 supplementary principles did not supersede the 1987 policy, the existence of two models left room for legitimate confusion on the part of organizations with respect to the requirements for recognition. The policy framework thus did not fully meet a basic effectiveness test: it created problems for the Minister rather than helping to resolve them.

179 *Ibid*, p. 31.

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Our conclusion is that the case for delaying redevelopment in order to accommodate advocates of a Toronto local airport authority was no stronger in 1992 than it had been in 1990. If anything, it was weaker, since the Request For Proposals provided tangible evidence that terminal redevelopment would not preclude the establishment of a local airport authority, and indeed could eventually be managed by such an authority.

(iii) Technical Issues

The development of the Request For Proposals raised a host of more specific technical issues, which by their nature required the Minister to rely heavily on advice from officials. The Minister has affirmed that he worked to address all these issues on a consensus basis with the appropriate officials, and we have heard no evidence from any of the officials (or otherwise) which would suggest the contrary.

It is noteworthy that the officials upon whom the Minister relied for advice and technical guidance had no reason to favour Paxport or any other proponent, were obliged as public servants to ensure a fair competition, and have sworn that this was done.

Our conclusion is that the technical requirements of the Request For Proposals reflect the complete success of the Minister and officials in maximizing the public interest through a fair competitive process. Considered collectively, the technical requirements of the Request For Proposals challenged the private sector to provide the Government, and Canadians, with innovative solutions to the need for modernization of the Pearson terminals and to participate in a fair and open competition to determine which proposal would be selected.

(iv) Lobbying Issues

Unquestionably, the developers lobbied extensively on behalf of Request For Proposal requirements which would favour their corporate strengths. Our investigation has revealed nothing sinister in this fact. Minister Corbeil and his officials made independent judgements, with respect to each of the issues which had to be addressed in developing the Request For Proposals, and rejected lobbyists' proposals which, in their view, were not in the public interest.

Thus, for example, Mr. Hession lobbied on behalf of Paxport's preference for a "contract definition" approach to development, which would have involved collaboration between the Government and a selected developer in establishing requirements and defining a development plan. Such an approach avoided the risk that investments in proposal development would produce no return which a competitive process posed to developers. Mr. Hession's efforts were, however, unsuccessful. Efforts to persuade the government to require that Terminals 1 and 2 compete with Terminal 3, which would have excluded ATDG (and

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its major owner, Claridge) from responding to the RFP, were also unsuccessful. Equally, Claridge's initial opposition to the timing of the Request For Proposals (which they believed would result in slower growth of passenger volume and revenue at Terminal 3) was not successful.

The Minister and officials had their own reasons for doing what they did, reflective in part of advice they were receiving from independent consultants supporting the Request For Proposal development process. If the adoption of certain requirements reflects the success of Mr. Hession's efforts at persuasion, this only testifies to the fact that Mr. Hession has a very considerable knowledge of government and of the kinds of public interest-based arguments which are likely to be given weight by public officials.

Our conclusion reflects a systematic effort, during our hearings, to get to the bottom of allegations that lobbyists (or Paxport in particular) somehow exercised a sinister influence over the terms under which proponents would compete. **We find no evidence that the Request For Proposals was anything but immaculately fair. Indeed, as a concrete example of the fresh thinking called for by the 1987 airports management policy, it was exemplary.**

“We wanted their [Paxport’s] proposal. We wanted their building.”

John Desmarais
Transport Canada

In the case of the Pearson process, the release of the Request For Proposals marks an important milestone in the shift from political decision-making and policy direction to the implementation of decisions by the public service. The Request for Proposals essentially defined the objectives established by the Minister of Transport and Cabinet. With its release, the focus shifted to officials whose job it was to ensure that these objectives were met as effectively and efficiently as possible through a fair competition among proponents.

To select a proponent with whom a deal could be negotiated, public servants ensured that proposals met the objectives set out in the Request For Proposals, dividing their work into two distinct phases.

In the first phase, which covers the submission of proposals, Transport Canada officials provided advice to proponents, implemented a ministerial decision to extend the submission deadline, and received proposals.

In the second phase, the proposals were evaluated and a recommendation provided to the Minister, who also received a supplementary audit initiated by the Minister of Industry, the Hon. Michael Wilson. A Best Overall Acceptable Proposal was subsequently announced.

1. The Submission of Proposals (16 March 1992 - 13 July 1992)

A) The Proponents

The release of the Request For Proposals gave interested developers the green light to complete proposals. As has been seen, work was already underway, based on whatever information proponents had been able to glean about the likely requirements in the RFP and departmental feedback to inquiries. Nevertheless, the preparation of finalized proposals made substantial demands on all proponents.

Mr. Hession, reviewing Paxport's activities at this time, advised us that the submission period initially announced had been "certainly, undoubtedly, demanding," but not unfair or inappropriate and, indeed, fully consistent with normal practice in public sector

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contracting¹⁸⁰. During this period, Paxport assembled at its Bloor Street headquarters a team of principals and consultants, at its peak numbering nearly sixty people, who worked intensively to prepare a 2,000-page proposal. According to Mr. Hession, a central focus of the Paxport effort was to identify and satisfy the requirements of the passengers using the airport. The firm of Decima Research was engaged to conduct public opinion research for this purpose. As well, Paxport assessed the characteristics of world-class international airports, drawing directly on advice from officials at Amsterdam's Schiphol Airport, regularly ranked at the head of this group, through a five-year consultancy arrangement whereby a Schiphol employee was transferred to the Paxport team¹⁸¹.

According to Mr. Hession, the resulting proposal had four fundamental features: (1) it provided a higher return to Canadian taxpayers than the status quo; (2) it enhanced the competitiveness of the airlines by providing modern facilities at fair rents; (3) it delivered the redeveloped facilities at a per passenger cost below the North American average; and (4) it achieved a reasonable and adequate return on investment for Paxport shareholders¹⁸².

The information we received from representatives of Paxport's competitor, Claridge was less detailed than that provided by Mr. Hession, but it did show the general outlines of Claridge's activities during this period. According to Mr. Coughlin, President of Claridge Properties Ltd., he was approached, shortly after the issue of the Request For Proposals, by Mr. Jim Bullock, the coordinator of the Ontario government's attempts to organize a Local Airport Authority (the Southern Ontario Airport Authority) for the purpose of submitting a proposal. Claridge agreed to participate in a joint proposal, and beginning in April 1992 its team of professionals commenced work on its preparation.

This activity continued until late May or early June 1992, when the attempt to form a Local Airport Authority was abandoned as a result, according to Coughlin, of disagreement among Toronto municipalities over a structure¹⁸³.

While this abandonment was viewed as a setback, Claridge decided to proceed on its own with the proposal, after receiving an extension of the proposal submission deadline from Transport Canada. This permitted the Claridge proposal to be accepted when it was submitted on 13 July 1992¹⁸⁴. Mr. Coughlin attributed the need for extra time to the unusual circumstance created by the withdrawal of Claridge's partner, and described the original

180 See *Proceedings*, 8:75.

181 See *Proceedings*, 8:40.

182 See *Proceedings*, 8:76.

183 See *Proceedings*, 17:12 and 17:72.

184 See *Proceedings*, 17:12.

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ninety-day period as "reasonable"¹⁸⁵. Indeed, he claimed that even had an extension been refused, Claridge would still have been able to submit its proposal, although in a less polished form.

The proposals from Paxport and Claridge were the only ones accepted. The firm of Morrison Hershfield also submitted a proposal but opted not to provide the \$1 million deposit required under the terms of the Request For Proposals. Its proposal therefore did not qualify for consideration by Transport Canada.

While we did not have the opportunity to discuss the Morrison Hershfield proposal directly with its proponent, we were provided with documents used by this firm as the basis for a presentation given to the Nixon review in the fall of 1993. These documents indicate that the firm advised Mr. Nixon that its proposal was "outside the RFP," ie. that its proposal did not meet requirements contained in the Request For Proposals. This recognition was based, in part, on fact that the proposal did not involve the transfer from the government to the private sector of staff or capital investment.

2. Within the Department

The Minister and departmental officials faced one significant decision during this period, Claridge's application for an extension of the submission deadline. Minister Corbeil's testimony suggests that the deadline extension was viewed as something of a foregone conclusion, given the position announced on release of the Request For Proposals. The deadline was extended to 13 July 1993, increasing the time for preparing proposals to some 127 days.¹⁸⁶

Mr. Hession appears to have protested vigorously, on behalf of Paxport, on hearing that an extension was under consideration. A letter dated 9 June 1992¹⁸⁷ alludes to a conversation of 4 June during which Mr. Hession had apparently stated that (1) Paxport would be ready by the original deadline, and (2) a delay would increase project costs and expose Paxport to possible industrial espionage or inadvertent disclosure. A polite response was prepared for signature by the Deputy Minister, reminding Mr. Hession that on release of the Request For Proposals the Minister had declared his readiness to consider requests for extension by serious proponents, in view of the shortness of the submission period.

According to the current Deputy Minister, Mr. Nick Mulder, the normal practice of departmental officials at this juncture is to provide to all competitors any information

185 See *Proceedings*, 17:74.

186 See *Proceedings*, 21:34.

187 Raymond Hession to Huguette Labelle, Committee document LA 001538.

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provided to one, and to attempt where possible to do so in a forum open to all participants¹⁸⁸. Reflecting this practice, the document room set up in Toronto was proponents' first source of information. In addition, departmental documents refer to "extensive requests" from proponents during the April/May 1992 period for site inspections and other technical information¹⁸⁹.

In addition to providing information, departmental officials finalized the evaluation arrangements during this period. These activities were described for us by Mr. Lane, head of the evaluation team. Between March to June 1992, the team (organized in five sub-committees established to evaluate proponent qualifications, development plans, maintenance and operation plans, transfer plans and business plans) worked in Ottawa to finalize the evaluation criteria, numerical weightings, and evaluation methodology all of which were documented in evaluation work books for use by the individual evaluation committee members¹⁹⁰.

The description given us by Mr. John Cloutier, co-chair of the transfer plan evaluation sub-committee, suggests that each sub-committee exercised substantial responsibility in its area of speciality. The transfer evaluation plan sub-committee, composed of specialists from both the department and outside, worked between March and June to develop the detailed elements of the rating criteria and the plan in line with the global approach of the team¹⁹¹.

The same picture of relatively autonomous work by specialists on the sub-committees emerged from the testimony of Mr. D.G. Dickson, a member of the business plan evaluation sub-committee. According to this testimony, this sub-committee would seem to have relied on non-public service specialists somewhat more than did the other sub-committees, reflecting the nature of its work. During this preparatory period, the sub-committee engaged the firm of Richardson Greenshields to provide professional accounting and financial advice for the duration of the evaluation process¹⁹².

These efforts were required to ensure that the evaluation process complied with one of the broad requirements of "due process", that a fully developed evaluation methodology should be prepared before consideration of any proposals. Price Waterhouse, the consulting firm supporting the proposal process, was to ensure that these requirements were met. That firm's role did not encompass the assessment of such substantive elements of the process as

188 See *Proceedings*, 2:23.

189 *Minutes of meeting* of May 20, 1995, Committee Document LA 000352.

190 See *Proceedings*, 6:48.

191 See *Proceedings*, 6:51 and 6:56.

192 See *Proceedings*, 6:52.

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the weightings assigned to the various evaluation criteria. Mr. John Simke of Price Waterhouse informed us, however, that objections would have been raised had the guidance to proponents in the Request For Proposals not been reflected in the evaluation methodology. There were, apparently, no concerns of this kind¹⁹³.

According to Mr. Lane, the preparation phase was concluded when the committee co-chairmen signed off all the documentation and evaluation booklets, after which point no deviations from the process were permitted. Also at this point, the Minister was presented with all the documentation for review. No attempt was made to alter the methodology as submitted¹⁹⁴.

During the preparation period, as well, evaluation team members decided on the appropriate time-frame for the evaluation. According to Mr. Lane, team members decided that since proponents had been able to prepare proposals in approximately three months, it would be reasonable for them to "have a shot at evaluating them in two months"; the aim was to prevent the process from bogging down in second guessing. Thus two months became the working timetable. Mr. Lane assured us that there were no external pressures on the team to move fast. On the contrary, the team was told to take whatever time was required¹⁹⁵.

A final preparation within the department was an evaluation by Price Waterhouse of the commercial opportunity associated with the project. The purpose of this exercise was to identify for the government a range within which a financial offer by a private developer could be considered reasonable.

To provide estimates, Price Waterhouse developed two general scenarios: a conservative approach which projected revenues from airlines at a cost-recovery level, and an optimistic approach which projected revenues based on what airlines might be prepared to pay, using Terminal 3 revenue as an indicator. Under the conservative scenario, the value of the rights to operate the terminals was estimated at between \$127.6 million and \$311.3 million. Using the optimistic scenario, the estimated range was \$342.8 million to \$561.4 million¹⁹⁶.

193 See *Proceedings*, 15:12.

194 See *Proceedings*, 6:52.

195 See *Proceedings*, 6:53.

196 *Transport Canada Valuation of the Commercial Opportunity Associated with Redeveloping Terminals 1 and 2 of Lester B. Pearson International Airport, July 1992* also see *Proceedings*, 15:5.

3. Other Activity

A) Local Airport Authority Activities

The official proposal development period seems to have seen the emergence of several competing local airport authority initiatives, although our evidence does not provide precise dates for their initiation and termination. It would appear that while the attempt to form the Southern Ontario Airport Authority and submit a bid jointly with Claridge was collapsing, supporters of the Greater Toronto Regional Airport Authority continued to prevail upon the Minister to delay the process. According to Mr. Harrema, Chair of the Durham Regional Council, letters were written, and local Members of Parliament, among others, were approached¹⁹⁷.

According to Mr. Gardner Church, whose role as Minister for the Toronto region placed him at the centre of provincial attempts to foster a proposal by a Local Airport Authority, "some fairly spectacular efforts" were made to organize a credible bid. The Request For Proposals, required a detailed technical submission which would have been, however, "very difficult" to develop within the specified time-frame¹⁹⁸. Church testified further that this attempt was subsequently abandoned, when the federal government indicated that federal local airport authority recognition policy precluded provincial government involvement¹⁹⁹.

The effort to form the Southern Ontario Airport Authority, combined with the Mayor of Mississauga's opposition to the GTRAA and her support for immediate redevelopment, could only have strengthened the impression formed by Minister Corbeil and federal officials of significant dissensus among the municipalities directly affected by Pearson Airport²⁰⁰. We note, too, that the developer involved in the Southern Ontario Airport Authority joint venture ascribed its demise to the absence of sufficient support among the Toronto municipalities. This would confirm the view of federal officials rather than that of Mr. Church.

B) Lobbying

According to Paxport's coordinating government relations consultant, Mr. William Neville, lobbying on behalf of Paxport during this period focused on the general briefing strategy mapped out before the issue of the Request For Proposals. The briefing of interested

197 See *Proceedings*, 5:19.

198 See *Proceedings*, 5:25.

199 See *Proceedings*, 5:25.

200 See *Proceedings*, 8:19.

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parties, which included local Members of Parliament of all parties, was substantially carried out by Mr. Hession, using materials prepared by lobbyists.

According to Mr. Neville, all activities following the release of the Request For Proposals recognized that "those actually making the decision are off-limits"²⁰¹. We note that adherence to this principle by not only Mr. Neville but the other lobbyists involved in the Pearson process was confirmed by departmental officials²⁰².

Mr. Harry Near and Mr. Bill Fox of the Earnscliffe Group, which acted for Claridge during this period, provided an overview of activity during the spring, summer and fall of 1992. As the proposal was developed, the communications aspect of Earnscliffe's work became more prominent. Mr. Bill Fox, who exercised primary responsibility for Earnscliffe's communications and public opinion research work, described the major elements of preparatory communications work: development of a full audio-visual presentation supporting the proposal; printed materials such as news releases and background papers, speech drafts and talking points, a media contact program, and coaching the Claridge people who would actually make the presentations²⁰³.

As the submission deadline approached, the focus shifted to assisting representatives of Claridge in making representations to public service officials in the lead departments for the Pearson process: Transport, the Privy Council Office, Finance and Industry. Representations were also made to politicians, especially those from the Toronto area, as well as political staff²⁰⁴. As of early July, according to our information, target lists had been prepared assigning designated officials to various individual members of the lobbying team. Included on the list, according to Mr. Near, were officials expected to be involved in the decision-making process²⁰⁵.

The account from representatives of Earnscliffe was broadly consistent with that from Mr. Herb Metcalfe, Capital Hill Group, on activities during this period. According to Mr. Metcalfe, the early representations to elected and public service officials also served as a means of gathering information on the likely key requirements of the government, which could then be fed into the proposal development process²⁰⁶. Also according to Mr. Metcalfe,

201 See *Proceedings*, 16:18.

202 See Observations and Conclusions to this Chapter.

203 See *Proceedings*, 15:83.

204 See *Proceedings*, 15:82 and 119.

205 See *Proceedings*, 15:92-93 and 127.

206 See *Proceedings*, 15:120.

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the scope of contacts and activities carried out with respect to the Pearson terminals were typical for an undertaking of this type²⁰⁷.

4. The Proposals

On 13 July 1993, Transport Canada accepted two competing proposals for the redevelopment of Terminals 1 and 2, each running to several thousand pages when supporting documentation is included. Each proposal, as required by the Request for Proposals, was accompanied by a deposit of \$1 million and constituted an irrevocable offer valid for a period of eighteen months starting from the submission deadline. In general, the proposals offered very distinctive approaches to meeting the objectives set out in the Request For Proposals. Their broad outlines nevertheless provide a useful reference point for consideration of the evaluation exercise²⁰⁸.

A) The Claridge Proposal

The main operational aspects of the Claridge proposal were as follows. Terminal 1 would ultimately be replaced. Terminal 2 would be extended and a new pier created in the location now occupied by Terminal 1. A plan for shifting traffic to Terminal 3 and a satellite during construction was included. Modifications to access roads and expanded parking were provided for. Development would be in two phases (1993-1998 and starting in 2004) and would involve capital expenditures of some \$758.3 million.

The Claridge proposal provided for an unconditional initial quick-start investment of \$130 million, reimbursement to Air Canada of \$30 million for its recent investments in Terminal 2, and the phasing in of charges to airlines up to a level comparable to that of Terminal 3, following Claridge's initial investment.

The offer to the Crown consisted of a combination of (1) a \$30-million lump sum payment (which included payment for chattels), (2) base rents of \$7.5 million for each of the first six years, rising by \$2.5 million every five years to a ceiling of \$40.5 million in year 59 of the lease, and (3) a percentage of rentals that would increase with dollar volumes (from 3% of the first \$70 million to 25% of all rental revenues over \$200 million).

207 See *Proceedings*, 15:132.

208 See Transport Canada, Airports, *Proposal Evaluation - T1/T2 Terminal Redevelopment Project*, October 1992.

B) The Paxport Proposal

The Paxport proposal also involved the eventual replacement of Terminal 1, extension of Terminal 2 and creation of a new pier where Terminal 1 is now located. This proposal also provided for expanded parking, a new office complex and hotel, and a new administration building. Also proposed was extensive realignment of the airport road system, along with the relocation of long-term parking and taxi/limousine areas. Development was proposed in four stages, running from 1993 to 1999, and involving total capital investment of \$858 million.

The Paxport proposal provided for a conditional early start option involving investment of \$150 million, tied to management and operation of all concession space and parking with revenues going to Paxport. It also provided for the reimbursement to Air Canada of \$36 million for its recent investments in Terminal 2, to be paid over the term of the Air Canada lease. Increased charges to airlines were to be phased in over four years.

The offer to the Crown consisted of a combination of (1) a \$7-million initial payment for chattels in the terminals; (2) base rent of \$27 million rising to \$30 million by year 4, and adjusted annually thereafter for inflation and passenger volume; and (3) a substantial (30.5) percentage of rentals less base rent, which would increase with dollar volumes over a \$125-million threshold. Separate flat rates (adjusted for inflation) for utilities and stipulated land parcels were proposed.

In addition to the above, the Claridge and Paxport proposals provided differing plans for management and operations, the transfer of federal employees and industrial benefits.

5. The Evaluation of Proposals (14 July 1992 - 7 December 1992)

After the submission of proposals, the Pearson process centres for several months on events within the department and initially on the evaluation team itself, which had been mandated to carry out a pre-established process insulated from both departmental and outside influence.

A) The Work of the Evaluation Team

On 13 July 1993, the due date for the proposals, the evaluation team was in the process of moving to Toronto. The move had been requested by Mr. Lane, who was in charge of the process, in order to detach members of the team from their normal duties. As well, the distance of Toronto from Ottawa would make it easier to maintain the

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security of the process, and gave the evaluation team direct access to the specialized expertise of the Toronto project team²⁰⁹.

When the proposals arrived, they became subject to stringent security procedures to preclude alteration during the evaluation exercise and safeguard commercial confidentiality. The procedure involved storage of the original copy in a vault and delivery of working copies to the process auditor (Raymond, Chabot, Martin, Paré), who controlled access and use for the duration of the evaluation²¹⁰.

What ensued was a period of intensive work by the five evaluation sub-committees. According to Mr. Lane, the circumstances enabled participants to be fully immersed in the evaluation activity; they frequently worked very long days in order to stay on schedule. The Assistant Deputy Minister, Airports, came by to offer encouragement but, aside from this, the team worked essentially on its own²¹¹.

As the sub-committees completed their reports, they were brought before the main evaluation committee, where other members were encouraged to challenge any aspect of the contents, including findings and explanations. Several sub-committee teams were "sent back," primarily to ensure that their explanations of the ratings were complete, before all the challenges raised in the main committee were satisfactorily met²¹². At the conclusion of the process, on the basis of unanimity over findings and ratings and general consensus over other elements, the committee developed its overall conclusion.

Since issues relating to the financial viability of proposals and proponents were later to surface persistently, we questioned the officials who had participated in this aspect of the evaluation with particular care. They advised us that the firm of Richardson Greenshields hired to support the evaluation of business plans, had conducted a due diligence search on the proponents and provided information and advice relating to the financial health of the consortia that had submitted proposals.

On the basis of this information obtained, Richardson Greenshields advised the business plan evaluation sub-committee that, in their view, there was a reasonable probability that each proponent would be able to finance the project outlined in its proposal²¹³. The business plan sub-subcommittee (and subsequently, the full evaluation committee) concurred in this advice. However, issues relating to the ability of the consortiums to actually

209 See *Proceedings*, 6:49.

210 See *Proceedings*, 6:56.

211 See *Proceedings*, 6:49.

212 See *Proceedings*, 6:65.

213 See *Proceedings*, 6:68 and 6:71.

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demonstrate that financing was in place, and that arrangements had been made with major tenants such as the airlines which would ensure an adequate revenue stream to the developer, would remain to be addressed at a later date²¹⁴.

On 28 August 1992, the evaluation committee completed its work and submitted its unanimous recommendation to the Department. It found the Paxport proposal superior in four of the six categories rated: development plan (25% weighting); business plan (40% weighting); management and operations plan (20% weighting); and industrial benefits (5% weighting). The Claridge proposal was found to be superior in two areas: proponent qualifications (5% weighting) and employee transfer plan (5% weighting).

The committee concluded that the Paxport proposal qualified as the Best Overall Acceptable Proposal (BOAP), having obtained 577 rating points over 497 points for the Claridge proposal.

The committee also found that both proposals met the requirements of the Request For Proposals in the six rating categories. As well, there were a number of conditions and limitations in each proposal that the committee recommended be addressed in the course of negotiating a formal agreement²¹⁵.

B) The Process Auditor

As has been mentioned, the firm of Raymond, Chabot, Martin, Paré had been engaged to monitor the evaluation process to ensure that team members adhered to security, confidentiality and broader procedural requirements and audit the entire process following its completion to ensure its compliance with requirements stated in the Request For Proposals, that resources assigned to the evaluation had been appropriate, and that the final recommendation of the evaluation team adhered to the pre-established evaluation criteria and process²¹⁶.

In the monitoring report, dated 26 October 1992, the auditors found that:

- the Proposal Evaluation Committee (PEC) had taken every measure possible to ensure documentation control and confidentiality;
- the PEC had adhered to the predetermined procedures, evaluation criteria and scoring system;

214 See *Proceedings*, 6:71.

215 See *Report of the Evaluation Committee*.

216 *Auditors' Report*, 18 September 1992, Committee document LA 001400; Also see *Terminal Redevelopment Project Monitoring Activities*, 26 October 1992, LA 001420.

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- the private sector members had participated meaningfully in the work of the PEC; and
- the PEC had taken all advice from the Department of Justice into account.

In the process audit report, dated 18 September 1992 but submitted, in finished form, on 26 October as well, the auditors found that:

- the evaluation documentation conformed to the requirements of the Request For Proposals;
- the resources assigned to the evaluation were appropriate; and
- the final recommendation conformed to the predefined evaluation process.

Expanding to the Committee on the work involved in the audit, Mr. Robert L'Abbé, the auditor who led the Robert, Chabot, Martin, Paré team, told us that, among other precautions, the auditors had reviewed the application of the evaluation criteria. Wherever they found an apparent discrepancy in the work of any of the evaluators, they assessed its possible impact on the outcome. Mr. L'Abbé was thus able to assure us that any discrepancies would not have affected the overall ratings and to confirm the finding of the evaluation committee²¹⁷.

The auditors also assessed the impact of charges to the airlines on the returns anticipated in the proposals. This was done in order to determine whether the results of the evaluation would have been altered by deletion of a charge to the airlines proposed by Paxport, but not by Claridge. The financial viability of Paxport's proposal was found not to depend on the charge to the airlines. In the absence of charges to the airlines, sufficient cash flow could be generated from operations to pay the proposed rent to the Crown. Although the auditor's task was not to evaluate the proposals, their financial analysis found that the structure of the financial offer from Paxport was:

...substantially more interesting to the Crown than was that of ATDG. In fact, the fixed amount and percentage rate of return constituting the rent are much greater than ATDG's proposed rent could ever be"²¹⁸.

C) The Edlund/Curran Report

The next development in the chain of events leading to the public announcement of the best acceptable proposal involved a form of political intervention. Interestingly, its effect was to slow the pace of decision-making rather than to accelerate it, and to raise additional difficulties for the Paxport proposal, rather than to smooth its path.

217 See *Proceedings*, 7:54.

218 *Appendix 2, Use of Financial Model, Auditors' Report, Proceedings*, 7:65-66.

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According to the Mr. Harry Swain, Deputy Minister of Industry during these events, the Hon. Michael Wilson became concerned about the Pearson Airport process, in the fall of 1992. His interest reflected his role as lead minister for the Toronto area, and a member of the inter-ministerial committee which had been established to involve ministers whose mandates related to the T1/T2 project. Minister Wilson's concern focused on the financial capacity of the proponents to implement their proposed development plans over the lengthy period involved in the proposals²¹⁹.

As a result, Mr. Swain arranged with Mrs. Labelle, Deputy Minister of Transport, for two officials from the Department of Industry to travel to Toronto and inspect the full range of proposal and evaluation documentation generated to that point. The two officials, Ms. Connie Edlund (a chartered accountant) and Mr. Al Curran subsequently submitted a report to Mr. Swain on 8 November 1992²²⁰. Their study had involved a two-day information gathering phase at the project site in Toronto, followed by approximately two weeks of review and analysis in Ottawa during late October 1992²²¹.

We were advised that, because of the short time in which it was completed, the Edlund/Curran report focused narrowly on financial issues. Its major finding was that a range of concerns about the Paxport proposal rendered the Claridge proposal preferable in terms of financial soundness. The authors found that the amount of equity in the Paxport proposal "appeared insufficient," at \$66.5 million representing only 8% of the total financing required versus the \$130-million equity (33% of the financing required) proposed by ATDG²²². The Paxport proposal also envisioned the injection of an additional \$40 million through the issue of public shares in 1996; however, according to Ms. Edlund, this still fell short of desirable levels. Edlund and Curran also had concerns that the additional equity might not be able to be raised, although these concerns were moderated by a statement from Wood Gundy that Paxport "should not have undue difficulty raising the required debt"²²³.

According to Ms. Edlund, the Paxport proposal depended heavily on operating cash flows both to finance development and to provide the proposed return to shareholders, 10 per cent to commence immediately. The revenue returns projected in the proposal were, however, "overly optimistic" in the view of the Industry Canada officials²²⁴. A particular concern was Paxport's plan to renegotiate existing leases and concessions at higher rates,

219 See *Proceedings*, 7:5.

220 See *Proceedings*, 7:13.

221 See *Proceedings*, 7:31.

222 See *Proceedings*, 7:7.

223 See *Proceedings*, 7:19.

224 See *Proceedings*, 7:6.

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described in the report as resting on an "heroic assumption" that airlines and other parties would be able and willing to absorb substantial increases²²⁵.

Furthermore, their examination of the financial condition of the Paxport partners led Ms. Edlund and Mr. Curran to doubt the ability of these to make up the difference in the event of cost overruns, revenue shortfalls, or problems with the public offering. The condition of the Matthews Group, Paxport's largest shareholder, was a particular concern²²⁶. Its debt load of \$250 million was seen to be high, with no immediate upturn likely in its major business sectors²²⁷.

Finally, the report addressed the fees designated as "management fees" in each proposal²²⁸. They concluded that Paxport's forecasted management fees "seemed high"²²⁹. According to Edlund and Curran, Claridge's management fees rose to a ceiling of approximately 15% while those of Paxport rose from 24% in 1993 to 42% by 1998, staying constant after that date. While Claridge's fee was seen as "somewhat reasonable," the report describes Paxport's fees in clearly negative terms: "When taken with the shareholder's high dividend demand however, they are, perhaps an indication of rapacity"²³⁰. Mr. Swain later provided an implicitly harsher assessment, describing even Claridge's 15% fee as "already very high," and suggesting that fees in the 5% to 8% range would be more reasonable for a project of this nature²³¹.

The main positive conclusion of the study appeared to be that, if all Paxport's forecasts proved accurate, its rental payments to the Crown would be "significantly higher" than those proposed by Claridge: three times those of Claridge during the construction phase and twice those of Claridge following the completion of construction²³².

According to Mr. Swain, the study was provided to Mrs. Labelle, Deputy Minister of Transport, and to Mr. Shortliffe, who had by this time become Clerk of the Privy Council. Department of Industry officials did not seek or receive any reaction to the study, or information about its subsequent use²³³. Although we have received no direct evidence about

225 See *Proceedings*, 7:19.

226 See *Proceedings*, 7:7.

227 See *Proceedings*, 7:18.

228 See *Proceedings*, 7:23 and 7:42.

229 See *Proceedings*, 7:7.

230 See *Proceedings*, 7:10.

231 See *Proceedings*, 7:24.

232 See *Proceedings*, 7:6.

233 See *Proceedings*, 7:44.

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what was done with the Edlund/Curran Report by the Department of Transport, it was challenged during our hearings by two experienced financial analysts.

For example, according to Mr. Keith Jolliffe who, as Director of Corporate Planning and Special Projects provided financial advice at various stages of the project, the Edlund/Curran Report may not have provided definitive information about the management fees to be charged by Paxport. Mr. Jolliffe advised us that the 42% figure in the Report reflected a poor choice of comparisons, showing management fees as a proportion of only one component of total overhead. Had the management fees been expressed as a percentage of total operating and maintenance costs, they would have been in the vicinity of 10%, well within the range of acceptable overhead management fees.

Mr. Stehelin of Deloitte & Touche, who provided financial advice to the Department after the award of the Best Overall Acceptable Proposal, also advised us that this calculation was erroneous. According to Mr. Stehelin, the Paxport management fee would have been in the range of 4 to 5 percent of gross revenue, normal in the industry.

In retrospect, the Edlund/Curran Report did not provide a valid basis for discarding the recommendation of the Department's evaluation process. It was conducted in an extremely short time-frame, and its focus was limited to one of the six criteria used in the departmental evaluation process to ensure consideration of all the major implications of the proposals. The appropriate use of the Edlund/Curran Report was as a means of identifying potential concerns within its very narrow perspective.

The essential concerns raised by the Edlund/Curran Report were reflected in the list of issues that would guide negotiations during coming months. The main issue, financeability, was identified as an immediate focus of discussions in the announcement and, as will be seen, was pursued with great rigour during subsequent phases of the process. Individual items such as the management fees charged by the proponent were also addressed during negotiations.

D) The Lobbyists

As has been seen, lobbyists had generally focused on building support for their proposals across the range of Pearson Airport stakeholders during the evaluation phase. Their efforts continued during the run-up to the announcement, along with attempts to monitor developments within the department.

Not until the week before the announcement, however, did Claridge's lobbyists begin to hear rumours in Ottawa that the government was close to announcing a decision in favour

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of Paxport²³⁴. According to Mr. Near, the weekend before the announcement, Earnscliffe and Claridge developed a strategy for persuading the government to be as stringent as possible with respect to the demonstration of financeability to be required from the winner. This approach was consistent with Claridge's representations earlier in the fall, and reflected Claridge's belief that its proposal could supersede Paxport's if financial requirements were sufficiently emphasized²³⁵.

The Earnscliffe/Claridge strategy took the immediate form of a memorandum, faxed to Mr. Shortliffe early on the morning of 7 December 1992, providing a draft announcement setting out a series of requirements that the winner should be required to meet. These included a deposit of \$100 million by 31 December 1992, and an agreement in principle with Air Canada on new lease terms consistent with the proposal, by the same date. The Earnscliffe/Claridge draft would also have had the government announce the transfer of 3 million passengers from Terminal 1 to Terminal 3, and commit itself to commence negotiations with Claridge immediately upon any failure by Paxport to meet its conditions²³⁶. The government did not, however, adopt any of these suggestions.

6. Announcing the Best Overall Acceptable Proposal

The issue of whether or not to proceed with announcement of a best overall acceptable proposal continued to be discussed during November 1992²³⁷. A number of considerations were weighed at this time. These included: Transport Canada officials' view that the need for construction had been deferred until 1996 because of the impact of the recession on traffic volumes; the fact that the earliest possible construction start date had been delayed because of the need for new leases to be negotiated with the airlines; the fact that Air Canada had asked for a postponement; and the possibility that the Ontario government would ask for a delay until a Local Airport Authority could be formed²³⁸.

Minister Corbeil's account of decision-making at this juncture was limited out of concern that Cabinet confidences not be betrayed. He did indicate, however, that the decision to proceed with the process after the selection of a best overall acceptable proposal would normally be made by Cabinet, rather than the Minister in isolation, a pattern to which the Pearson agreement decision-making process conformed²³⁹. He stressed, as well, his confidence in the evaluation process that had recommended the selection of Paxport and his

234 See *Proceedings*, 15:94.

235 See *Proceedings*, 15:97.

236 See *Proceedings*, 15:96-97.

237 See *Proceedings*, 24:65.

238 See *Proceedings*, 24:64 and Committee document LA 002188.

239 See *Proceedings*, 21:15.

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view that only a full halt to the redevelopment initiative would have justified not following this recommendation²⁴⁰.

Thus it was decided to proceed with the public announcement of a best overall acceptable proposal. In the announcement, Minister Corbeil outlined the nature of the proposed development, stressing the economic importance of Pearson Airport and the immediate stimulus to the Toronto construction industry that would result. He estimated that 3,200 direct and indirect jobs would be created over the construction period, and that the creation of a world-class airport facility would continue to generate economic benefits by attracting convention and tourism activity.

The announcement also noted the government's concern with changing financial realities in the airline industry. It was noted that Paxport would have to satisfy the Government of Canada as to the financeability of its proposal before the commencement of the negotiations towards a formal agreement²⁴¹.

7. Observations and Conclusions

A) Process

As at other stages, we systematically asked officials who had had significant responsibilities at this stage for their views on the process. In particular, we asked them to state their personal judgements as to whether they had been subjected to requirements for speed that compromised their work, whether their work had been subjected to political interference, whether lobbyists had influenced their decisions and whether, more generally, they were satisfied that the requirements of due process had been met.

Without exception, those responsible endorsed the process in which they had participated. In particular, the evaluation process and subsequent activities within the Department up to the announcement of the best overall acceptable proposal were endorsed by the Hon. Jean Corbeil, Minister of Transport during this period²⁴²; Mrs. Huguette Labelle, Deputy Minister, Transport²⁴³; Victor Barbeau, Assistant Deputy

240 See *Proceedings*, 21:68.

241 Transport Canada, Press Release, "Best Overall Acceptable Proposal Announced for Redevelopment of Terminals 1 and 2 at Lester B. Pearson International Airport," No. 189/92, 7 December 1992.

242 See *Proceedings*, 21:10, 21:65, 21:68 and 21:97.

243 See *Proceedings*, 8:40.

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Minister, Airports²⁴⁴; and Ron Lane, Chairman of the evaluation process and responsible for the development of evaluation criteria²⁴⁵.

Endorsements of the process were also obtained from Mr. Glen Shortliffe, Clerk of the Privy Council during this period²⁴⁶; Mr. William Rowat, who participated in the project during this period as Assistant Secretary to the Cabinet, Economic and Regional Development, Privy Council Office²⁴⁷; Mr. Mel Cappe, the senior Treasury Board participant²⁴⁸; Mr. Robert L'Abbé, auditor of the evaluation and evaluation process monitor²⁴⁹; and John Simke, who represented Price Waterhouse, the consulting firm which supported the evaluation process after having assisted with the development of the Request for Proposals²⁵⁰.

We posed the same questions to personnel who had worked on the project teams managed by the officials listed above. The result was the same: all endorsed the process as being fully in compliance with the requirements of due process and public service norms.

In the course of our hearings, we found no evidence to contradict participants unanimous affirmation of the complete integrity of the process in which proposals were received and evaluated and a best overall acceptable proposal selected and announced. As at previous stages, the safeguards to ensure that private interests do not override the public interest as perceived by the democratically elected representatives of the people were fully operative during this phase of the process.

B) Policy

The central policy issue during this phase of the process centered on the announcement of a Best Overall Acceptable Proposal. This issue raises two distinct questions, to which we give separate attention below.

(i) "Go" or "No Go"

First, the announcement decision required attention to the circumstances of Pearson Airport, along the lines explored in the previous chapter's discussion of the decision to

244 See *Proceedings*, 3:42.

245 See *Proceedings*, 6:80.

246 See *Proceedings*, 24:105.

247 See *Proceedings*, 11:30-31.

248 See *Proceedings*, 14:60.

249 See *Proceedings*, 6:58.

250 See *Proceedings*, 15:13.

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release the Request For Proposals. It is possible that a substantial change in circumstances during the approximately eight months, between the issue of the Request For Proposals and the decision to announce a Best Overall Acceptable Proposal, might have provided a compelling reason for calling a halt to development or seeking alternative ways of getting it done.

As has been seen, Transport Canada officials raised a number of considerations relevant to the 'go-no go' issue, and a decision was reached by Cabinet. Our findings fully support the decision to proceed with the announcement of a Best Overall Acceptable Proposal.

As Transport Canada recognized, the airlines continued to raise concerns about the pace of development, and any increased costs they might have to absorb. These concerns, however, had not been a valid basis for halting the project in March of 1992 and had not become one in November. Indeed, the airlines' demands for postponement implied their recognition that development was necessary; their concern was only that it be affordable.

The logical response to the airlines' concerns in March 1992 had been to ensure that the Request For Proposals stipulated that development would not place excessive costs on the airlines, and would take place at a pace that they and other tenants could afford. The logical response in November of 1992 was to verify that the Best Overall Acceptable Proposal responded to these stipulations, and to flag any remaining concern in this respect for resolution during negotiations.

The government did exactly what was logically required. As has been seen, in October 1992, the firm of Raymond, Chabot, Martin, Paré verified that the evaluation process reflected in the requirements of the Request For Proposal had been carried out in a satisfactory manner. Remaining issues relating to the financial situation of the airlines were clearly flagged in the announcement of the best overall acceptable proposal. The government's course of action fully met the genuine requirements of the airlines in the fall of 1992, and provided the basis for Air Canada's freely made decision to enter into an agreement with the developers during the following year.

The local airport authority situation in November of 1992 was virtually identical to that during the run-up to the issuing of the Request For Proposals. There was no viable candidate for a local airport authority and no significant progress towards forming one, despite the impetus provided by the issue of the Request For Proposals. Indeed, for much of the period between the issue of the Request For Proposals and the decision to announce a best overall acceptable proposal, the LAA situation became increasingly unclear. During this period, rival local airport authority candidates emerged in the Toronto area and the Mayor of Mississauga continued to follow a very independent path with respect to the whole development issue. Recognizing a local airport authority in order to guide development was no more a practical option in November 1992 than it had been in March.

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As in March, a delay in development so as to await the emergence of a local airport authority would have drawn strong opposition from the Mayor of the municipality in which Pearson was located, who was calling on the government either to repair Terminal 1 or board it up. Such a delay would also have gone against the Minister's own well-founded conviction that development was needed immediately (especially in Terminal 1). It would have left the government open to justified criticism that the interests of the broader public were being sacrificed in order to forestall criticism by what was then a tiny, though very vocal, minority which wanted to run Pearson Airport under the aegis of a local authority.

(ii) Which Proposal?

The second option available to the government would have been to proceed with development but set aside or reverse the results of the evaluation committee. As Minister Corbeil recognized, this would have been an extremely serious political intervention in what had by this time become an essentially bureaucratic process, subject to ratification by elected officials at certain key points.

A final consideration is that the decision to announce a Best Overall Acceptable Proposal did not involve an irreversible rejection of the proposal not selected. As we were repeatedly assured by officials and by representatives of Airport Terminals Development Corporation itself, the Claridge proposal stayed on the table. During the informal discussion phase which was to follow the announcement of the Best Overall Acceptable Proposal, the fact that the Claridge proposal remained an option for the Government, having also been found acceptable by the evaluation committee, provided Government negotiators with additional leverage in their dealings with Paxport.

Thus the announcement that Paxport had submitted the Best Overall Acceptable Proposal committed the government to go forward with the next step of the process.²⁵¹

Our overall conclusion is that, between 16 March 1992 and 7 December 1992 the Department of Transport administered an evaluation process of impeccable fairness, and that the announcement of a Best Overall Acceptable Proposal in December 1992 was not merely consistent with the public interest, but required by it.

251 As the response to the RFP constituted by its terms an irrevocable offer on behalf of the proponent for a period of 18 months, it could be argued that the letter of 7 December 1992 from Victor Barbeau to Paxport constituted a conditional acceptance of the irrevocable offer thus committing the government to move forward to deal with the proponents to satisfy the conditions.

"Everybody put a little bit of water in their wine."

William Rowat
Government negotiator

Following the selection of a Best Overall Acceptable Proposal, the central objective of the government and the selected proponent was to reach a detailed agreement specifying all the terms and conditions of a deal. This process involved two broad phases.

In the first phase, which ran from 8 December 1992 to 5 May 1993, discussions were held between government officials and Paxport representatives in order to resolve the pre-negotiation issues identified in the Minister's public announcement. A major development during this period was the formation of a joint venture between Paxport and ATDG, which then carried on discussions with the government.

In the second phase, which ran from 5 May to 7 October 1993, detailed agreements were negotiated, signed and (upon the developers' fulfilment of closing requirements) released from escrow. Adding considerably to the complexity of negotiations during this phase, was the disclosure to developers and negotiators of the 1989 "Guiding Principles," long-term lease document claimed by Air Canada to set out an agreement between itself and between the Government and Air Canada. In a further complication, the Pearson agreements became the subject of mounting political controversy during the fall, especially after the Writs of Election were issued on 8 September 1993.

The heightened role of the central agencies was another noteworthy feature of this phase. The Privy Council Office performed an oversight role, and also acted as a facilitator at certain key points. Reflecting the function of the Treasury Board, Treasury Board Secretariat officials subjected emerging arrangements to the kind of scrutiny that they would subsequently receive from the Ministers on the Treasury Board.

1. The Cast of Characters - An Introduction to the Process

At Paxport, on the day following the 7 December 1992 announcement of a Best Overall Acceptable Proposal, Mr. Hession's role in the Pearson process was redefined so that he became essentially an advisor. His subsequent negotiating responsibilities concentrated on the employee transfer plan and the industrial benefits plan, with his central focus shifting to the development of international project opportunities. Mr. Jack Matthews, who had been

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appointed Chief Executive Officer in September 1992, assumed general responsibility for negotiating the Pearson agreements²⁵².

In the Department, according to then Deputy Minister Huguette Labelle, Mr. Victor Barbeau, recommended that a full-time chief negotiator be appointed because, as Assistant Deputy Minister Airports, he was juggling a number of very active files relating to the management of Canada's airport system. This approach was concurred in by the Minister at that time, the Honourable Jean Corbeil.²⁵³

Mr. Randal Quail, then Associate Deputy Minister of Transport, was asked by Mrs. Labelle to serve as chief negotiator, a role he assumed from the beginning of January 1993 until his appointment as Deputy Minister of Public Works on 12 February 1993²⁵⁴. At this point, following consultations with P.C.O. and others, Mrs. Labelle obtained the services of Mr. David Broadbent, who had retired as Deputy Minister of Veterans Affairs the year before. He served as chief negotiator until after formal negotiations had begun.

As work proceeded through the spring of 1993, tensions appear to have arisen between Mr. Broadbent and the Transport Canada Airports Group, which was also being criticized by the developers for what they saw as the slow the pace of negotiations. The result, according to Mrs. Labelle, was that she and Mr. Barbeau, agreed that he should step aside as Assistant Deputy Minister, Airports Group, for a brief interval, in order to avoid becoming a target. Thus, on 27 May 1993, Mr. Barbeau left the Department for a period of approximately five weeks on leave, and was replaced on an acting basis by Mr. Michael Farquhar²⁵⁵.

Delays had made it evident by this time that the negotiations would not be completed by the end of May. As a result, Mrs. Labelle and Mr. Broadbent discussed whether or not he would wish to continue as chief negotiator beyond the original negotiating time-frame. According to Mrs. Labelle, Mr. Broadbent was not enthusiastic. Mr. Bill Rowat, who had an in-depth knowledge of the file was about to be transferred to the Department as Associate Deputy Minister. Therefore, Mr. Broadbent was not invited to renew his contract²⁵⁶. Mr. Broadbent's version of events provided a somewhat different account. He told us that he had had to manage the file "with one hand tied behind my back," because of limited support from

252 See *Proceedings*, 9:40.

253 See *Proceedings*, 8:8.

254 See *Proceedings*, 15:46.

255 See *Proceedings*, 8:9-10.

256 See *Proceedings*, 8:44.

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departmental officials; he had also felt blind-sided by unanticipated developments, to be detailed below, during the negotiations²⁵⁷.

As a result, on 15 June 1993, Mr. Bill Rowat assumed duties as chief negotiator, immediately following his appointment as Associate Deputy Minister of Transport.

The final change took place at the deputy-ministerial level, in the context of a shuffle of some twenty-one deputies on 25 June 1993, timed to coincide with a major government reorganization and the appointment of a new Cabinet by Prime Minister Kim Campbell. Mrs. Jocelyne Bourgon became Deputy Minister of Transport, after four and a half months as President of the Canadian International Development Agency. According to Mr. Glen Shortliffe, who as Clerk of Privy Council at that time would have exercised primary responsibility for senior personnel matters, he did not receive direction to make this reciprocal transfer, nor was he subject to any pressure to do so²⁵⁸.

There are changes of personnel in any process as lengthy as that which produced the Pearson agreements. Our central concern was to ensure that the changes above were not for reasons that would raise questions about the integrity of the process. We were assured by those involved that none of the departures reflected any public official's unwillingness to continue to be assigned to the Pearson terminal redevelopment project, or actual deficiency in the performance of duties related to it. With the exception of Mr. Barbeau's leave, which involved the temporary removal of a public servant described by his colleagues as extremely dedicated and competent in the performance of all his duties, the departures reflect the pattern of career changes and personnel replacements normal in any situation involving the same number of people and duration as the Pearson process.

2. Resolving the Pre-Negotiation Issues

A) The Government and Paxport

On 7 December 1992, the date of the public announcement of a Best Overall Acceptable Proposal, a letter signed by Mr. Victor Barbeau, Assistant Deputy Minister, Airports officially advised Paxport that its proposal had been selected. The same letter cited provisions in the Paxport proposal described as unacceptable or partly unacceptable, which would have to be addressed in negotiations. We were advised that a list of some fifty-five items was ultimately prepared within the department in advance of negotiations²⁵⁹.

257 See *Proceedings*, 9:98.

258 See *Proceedings*, 24:88.

259 See *Proceedings*, 15:58.

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The letter also specified two issues that would have to be addressed before formal negotiations could begin:

Moreover, the changing financial realities within the airline industry are impressing the government with a number of additional concerns, particularly the financeability of your proposal.

We are prepared to enter into negotiations to reach an agreement within the framework of the Request For Proposals provided that

- 1) certain changes required by the Minister are made to your Proposal in order to accommodate the government's concerns; and
- 2) you demonstrate to the satisfaction of the government by February 15, 1993 that your proposal, in the circumstances, is financeable²⁶⁰.

Confirmation of Paxport's acceptance of the various requirements set out in the letter, including the need to adapt to the reality that the recession was reducing the ability of the airlines to accept higher costs and the need to demonstrate financeability, was requested by 10 December 1992 and appears to have been received.

According to Mr. John Desmarais, Senior Advisor to the Assistant Deputy Minister, Airports Group, who had participated in the entire Pearson process, the reference to changing conditions within the airline industry reflected the possibility seen at the time as quite likely that Air Canada and Canadian Airlines might merge. It essentially told Paxport that it must consult with the airlines to determine what entity might ultimately be using the terminals, and its requirements²⁶¹.

Turning to the request for a demonstration that the proposal was financeable, the Request For Proposals had alerted proponents that proof of financeability would be required following the selection of a best overall acceptable proposal. This was portrayed by several officials as a normal step at the post-evaluation stage²⁶². According to Mr. Keith Jolliffe (Financial Advisor, Aviation Group, Transport Canada), who participated in both the evaluation process and subsequent negotiations, the need for proof of financeability reflected, in part, the nature of the evaluation process, which focused on financial projections developed within the two proposals. At the conclusion of the evaluation, the winning proponent had to undergo real-world financial tests based on the actual financial condition of its partners, and the demonstrated willingness of lenders to provide the required financing²⁶³.

260 See *Proceedings*, 11:75.

261 See *Proceedings*, 11:84.

262 See *Proceedings*, 6:80-81.

263 See *Proceedings*, 11:85.

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What would constitute a demonstration of financeability (beyond what was provided in the proposal) was, according to Mr. Hession, first discussed at a meeting between himself and Mr. Barbeau in Ottawa on 15 December 1992²⁶⁴. Mr. Hession had been told that departmental officials would not be defining what was required; any relevant information should be submitted whereupon a financial advisor engaged by the department would determine whether or not it was adequate. This account appears to be confirmed by a follow-up letter of 22 December 1992, from Mr. Barbeau to Mr. Hession, which states that "...it is not our intention to define for you what would constitute evidence of financeability which is satisfactory to the government."²⁶⁵

Mr. Hession was sharply critical of what he portrayed as a needless delay of some two months created by Transport Canada's approach to financeability discussions. This involved retaining the consulting firm of Deloitte & Touche in January 1993 to assess the financeability of Paxport's proposal²⁶⁶.

By late January 1993, a negotiating team had been assembled and an initial meeting held with Paxport officials to review issues, particularly Paxport's position on the financeability question. According to Mr. Quail, the central question was whether or not there had been significant changes in the requirements of potential lenders, or in their willingness to lend the needed amounts to Paxport, since the formulation of Paxport's proposal²⁶⁷. As well, Paxport's original financial information reflected elements of the proposal that the government was not prepared to accept, and the implications of this for the financeability of the proposal had to be addressed.

Further discussion of financeability issues, among others, took place in early February, this time in the presence of representatives of Deloitte & Touche and also of Cassels Brock, which had been engaged to provide legal advice through the negotiation process. On 9 February 1993, Mr. Jack Matthews requested that the 15 February deadline for proof be extended to 1 March; this was done in a letter dated 12 February, the date on which Mr. Quail moved to the Department of Public Works²⁶⁸.

During this period, the role of Mr. Paul Stehelin of Deloitte & Touche steadily increased in importance. Initially, he gathered the required information and provided advice on the financeability of the proponent. The account of his performance of these duties

264 See *Proceedings*, 8:78.

265 Victor Barbeau to Ray Hession, December 22, 1992, Committee document LA 000095.

266 See *Proceedings*, 15:47.

267 See *Proceedings*, 15:60.

268 See *Proceedings*, 15:47.

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indicates that he had considerable latitude in formulating financeability requirements and was not simply employing departmentally established standards.

Mr. Stehelin's initial conclusion was that the nature of the transaction precluded the unconditional guarantees envisioned in the Request For Proposals and by departmental officials. The real estate market in Metro Toronto was in serious decline as of early 1993; moreover, even under stronger conditions, no financial institution was likely to provide an unconditional commitment for the \$850 million to be needed over a period of eight to ten years, especially given the widespread concern about the health of the aviation industry. Defining a test of financeability that would both provide an adequate guarantee to the government and reflect real-world realities thus became itself a subject of discussion.

An examination of the availability of financing for staged development, required attention to the availability of financing for the initial stage and the identification of the conditions necessary for lenders to lend at subsequent stages. For example, it was essential in the second phase that traffic would grow in line with projections. Concerns about the world economy and the health of the airline industry thus became relevant.

In addition to formulating standards, Deloitte & Touche gathered data on the financial state of the Paxport partners, thereby determining that \$20 million of the equity committed by the Matthews Group would be funded by Allders, another Paxport partner, under an agreement made in June of 1992. This became important in subsequent discussions because it meant that the failure of Matthews Group would have made Allders, a major tenant as the operator of the duty free concession, the majority shareholder in Paxport. The government's position was that the terminals could not be controlled by a major tenant.

In a letter dated 2 March 1993, Deloitte & Touche provided Transport Canada with its first formal report on the financeability of the Paxport proposal. The report identified a series of concerns, stating that, unless they were resolved, "we cannot provide assurance to the Crown that this project can be financed"²⁶⁹. The reaction of Paxport to this assessment appears to have been extremely hostile (a departmental memorandum refers to "outrage" and charges of bureaucratic stalling)²⁷⁰.

As of 15 March 1993, when Mr. David Broadbent assumed the role of chief negotiator, the financeability of the proposal thus remained very much in contention. In Broadbent's view, four central questions had to be answered. They were: whether the capitalization of Paxport would be judged sufficient by potential lenders; whether the Paxport partners would actually contribute the amounts they had agreed to; whether the Matthews Group was financially sound and the issues raised by its reliance on a loan from

269 Paul Stehelin to Huguette Labelle, Committee document LA 00196, p. 6.

270 See *Proceedings*, 13:27.

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Allders could be resolved; and, finally, whether Air Canada would be capable of paying the higher rentals envisioned in the Paxport proposal²⁷¹. These issues continued to be discussed with Paxport during March, but with little apparent progress.

It is noteworthy that, during the initial months of discussions with Paxport, government officials carefully maintained that, in December 1992, the Claridge proposal had also been found acceptable. While it was not actively discussed, it was left on the table as a fall-back in the event that discussions with Paxport should not be productive. Government officials believed that this strategy had the additional advantage of giving the government more leverage in its attempts to resolve the pre-negotiation issues with Paxport. As well, it responded to concerns raised by Treasury Board officials that to shift to formal negotiations with Paxport before resolution of the financeability issue would violate the process set out in the Request For Proposals, and could have prompted legal action from Claridge.

B) The Government's Second Track

According to our witnesses, the possibility of some form of cooperative venture between Paxport and ATDG, or the Claridge interests, appears to have arisen as far back as November 1992. A memorandum dated 16 November 1992, from Clerk of the Privy Council Glen Shortliffe to Prime Minister Mulroney, alludes to this possibility with a statement that, at that juncture, there appeared to be few incentives favouring the venture. In his testimony, Mr. Shortliffe stated that the comment was a response to an inquiry from the Prime Minister, who had apparently been approached on the issue by Mr. Charles Bronfman at a social gathering at which Bronfman raised the idea²⁷².

The possibility of a merger was, however, given further attention by government officials. According to Mr. Shortliffe, the operational benefits of having a single operator, rather than concerns about the financial capacity of Paxport, caught the attention of government officials²⁷³. An unsigned government paper, which appears to relate to this period and which we received during our final hearings, explores options such as combining various elements of the Paxport and Claridge proposals, or having the two firms jointly develop a new proposal.

Mr. Hession indicated that he was contacted at Paxport by a senior Transport Canada official, during the days immediately following the announcement of a Best Overall Acceptable Proposal. The official suggested that Mr. Hession explore the possible synergies which could be achieved through cooperation with Claridge in the management of all three Pearson terminals. In a letter provided to us subsequent to his appearance, Mr. Hession

271 See *Proceedings*, 9:89.

272 See *Proceedings*, 24:65.

273 See *Proceedings*, 9:44 and 9:48.

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identified the senior official as then Deputy Minister of Transport Huguette Labelle. He also indicated that her telephone call prompted him immediately to suggest to Don Matthews that he call Mr. Bronfman, not to raise the issue but to provide Mr. Bronfman with an opportunity to raise it.

According to Mr. Coughlin of Claridge Properties, Mr. Bronfman raised the possibility of a partnership with Mr. Matthews shortly after the 7 December announcement, when Mr. Matthews had called to commend Claridge's competitive effort²⁷⁴. Mr. Coughlin advised us that in making this proposal, Claridge was following a contingency plan reflecting the belief that Paxport had the capacity to meet whatever financial tests the government was about to apply. When these tests were met, any chance for participation by Claridge in Terminals 1 and 2 would be lost.

The fundamental perception which had originally led to the formation of Claridge and the submission of a proposal was the view that an interest in the operation of Terminals 1 and 2 was necessary in order to safeguard the profitability of Terminal 3. This objective had become steadily more important as the recession affected the finances of Canadian Airlines. As the major tenant of Terminal 3, its failure would have resulted in both the immediate loss of its rent and in a major diversion of passengers to airlines using the other terminals, thus compounding the financial consequences for the owners of Terminal 3²⁷⁵. With this objective still in mind, Claridge made what Mr. Coughlin described as the "business decision" to sound out Paxport on the possibility of a partnership.

Mr. Matthews' account of events is consistent with that of Mr. Coughlin. According to Mr. Matthews, the initial conversation with Mr. Bronfman, on 9 December 1992, focused on the need for the two companies to cooperate during the redevelopment process. At a 16 December meeting in Toronto the parties agreed to pursue the issue, leading to further discussions about the possibility of a merger and, in turn, to the signing, on 14 January 1993, of a binding agreement to negotiate²⁷⁶. From Paxport's point of view, the attractions of the merger were similar to those perceived by Claridge: it would give Paxport part ownership of Terminal 3, permit that terminal to be used in the course of the construction program for savings of some \$75 million, and achieve operational savings of some \$4 million per year on an ongoing basis²⁷⁷.

Under questioning, both Mr. Coughlin and Mr. Matthews stated very definitely that there had been no communications with Paxport about a possible joint venture before 7

274 See *Proceedings*, 17:12 and 17:20.

275 See *Proceedings*, 17:19.

276 See *Proceedings*, 18:40.

277 See *Proceedings*, 18:81.

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December 1992, nor had there been any pressure from the Prime Minister's Office or the Privy Council Office in favour of such a possibility²⁷⁸.

The account of events provided by departmental officials was broadly consistent with that of the developers. According to Mr. Quail, to his knowledge the possibility of some form of Paxport/Claridge merger only surfaced within the Department of Transport in late December 1992. It was not until mid-January, however, that tangible evidence became available.

On the weekend of 16-17 January, Mr. Quail received a telephone call from Mrs. Labelle requesting his attendance at a meeting, on Monday 18 January, with representatives of both Paxport and Claridge. At this meeting, departmental officials were advised of the 14 January 1993 letter of agreement, in which the two firms jointly committed themselves to negotiations to lead to the 50/50 joint venture between Paxport and Claridge initially known as Mergeco. It was agreed that the possibility of such a venture would be kept confidential until the two parties had fulfilled the commitments undertaken in their agreement and the venture became a reality, and that in the meantime the government's discussions with Paxport could continue²⁷⁹.

This development had an immediate impact on the course of discussions. First of all, it raised fundamental questions in the minds of government negotiators. At the 18 January meeting, for example, Mr. Quail requested information identifying the lenders for the joint arrangement, and sought agreement that the Paxport proposal would be the one discussed with the joint venture²⁸⁰. It was made clear that the government would find unacceptable any substantial deviations from the framework of the proposal, which had been evaluated as best overall acceptable²⁸¹. As well, notes made following the 18 January meeting include questions such as "Is deal wide open? Is process shot to pieces?". As well, it was recognized that the issue of financeability could now be addressed on a new basis.²⁸²

At this point, as well, Mr. Quail sought legal advice on the effects of a merger on the negotiation process; however, because merger arrangements were at such an early stage, definitive advice was not available before his transfer²⁸³. He did, however, receive advice from Mr. Chern Heed, Manager of Pearson Airport and a member of the negotiating team, which apparently reflected discussions with other team members. The advisory

278 See *Proceedings*, 18:79.

279 See *Proceedings*, 15:93.

280 See *Proceedings*, 15:94.

281 See *Proceedings*, 15:95.

282 See *Proceedings*, 15:68-69.

283 See *Proceedings*, 15:70.

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memorandum states that in the absence of evidence to the contrary, the merger should be seen simply as a corporate restructuring:

The fact that the selected proponent is selling 50% of its rights as "the proponent with the best overall acceptable proposal" (whatever those rights may be) is not seen as a violation of the process, unless there was some evidence that there was collusion earlier in the proposal process and we have no reason to suspect there was²⁸⁴.

The final weeks of January 1993 brought some clarification about the nature of the joint venture envisioned by Claridge and Paxport. Departmental officials spent the period up to early February identifying potential issues and concerns²⁸⁵.

According to Mr. Broadbent, who assumed the role of chief negotiator on 15 February, the obvious strategy of the Crown was, first of all, to procure the benefits of the Paxport proposal. (which involved a superior financial return to the Crown, in addition to a more attractive development plan than that proposed by Claridge), backed by the financial strength of Claridge's owners, the Bronfmans²⁸⁶. As he said, "...there wasn't any question in my mind of producing a deal at any cost. Any deal that was produced was going to be a good deal or there'd be no deal"²⁸⁷. The second part of the Crown strategy would be to respond to the financial situation of the airlines by structuring the agreements so that they could avoid heavy up-front charges to the airlines²⁸⁸.

The Broadbent team aimed to separate the issues as much as possible and run discussions on parallel tracks; in this way, issues such as personnel matters, industrial benefits and even the preparation of draft agreements could be taken to an advanced stage informally, while formal negotiations awaited the resolution of "deal breaker" problems such as the financeability issue²⁸⁹.

Mr. Broadbent's instructions, apparently expressed by both Mrs. Labelle and Mr. Shortliffe, were to move the process forward rapidly, so that negotiations could be brought as close to a conclusion as possible by the end of May 1993²⁹⁰. Mr. Broadbent interpreted this to mean that the government of the day, not surprisingly, wanted to finish outstanding

284 See *Proceedings*, 15:63-64.

285 See *Proceedings*, 15:47.

286 See *Proceedings*, 9:89.

287 See *Proceedings*, 9:90.

288 See *Proceedings*, 9:110.

289 See *Proceedings*, 9:91-92.

290 See *Proceedings*, 9:102.

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business before the leadership convention in June. The Prime Minister had, apparently, communicated "live interest" in the Pearson file to Mr. Shortliffe. According to Mr. Broadbent: "...whatever pressure, if there was any, came from that direction and stopped with Glen Shortliffe. He was the buffer. He absorbed it. There was no pressure on me"²⁹¹.

Of special interest in the early stages of Mergeco was whether the joint venture and attendant changes to the proposal would represent an unacceptable departure from the framework deal selected as the best overall acceptable proposal. This issue was raised by Mr. Broadbent with Deputy Minister Huguette Labelle and subsequently discussed with Privy Council Office and Treasury Board officials who, according to Mr. Broadbent, specifically reviewed it and gave it a clean bill of health²⁹².

During April and May, work proceeded on an interrelated set of issues, many of which had implications for discussions on financeability. For example, the government's wish to minimize the short-term cost increases for airlines directed attention to arrangements whereby phases of development were conditional upon the attainment of passenger volume thresholds that would make the phase more affordable. The government's desire to defer cost increases to the airlines also led to a short-term deferral of rental payments to the Crown, along with the absorption by developers of some of the costs during the initial period²⁹³.

During this period, March to June 1993, Mr. Stehelin (the Deloitte & Touche consultant on financeability issues) worked full-time on the Pearson file. The formation of the Claridge-Paxport joint venture had one immediate benefit: it removed the hitherto unresolved concern that failure of the Matthews Group might place the project in the hands of a major tenant. Paxport would hold only a 50% share of the joint venture. Thus even if the Matthews Group share were to be acquired by Allders (because of a default on the loan to Matthews) Allders would not acquire control of the project²⁹⁴.

Other issues relating to the determination of financeability continued to evolve. The need to provide satisfactory guarantees to the government that the required financing would be in place, remained under intense discussion through April and May, even though the emergence of the joint venture, backed by Bronfman interests, substantially reduced concern. Such continuing discussion was necessary because of the relation between financeability and other aspects of the evolving structure of the deal.

According to Mr. Stehelin and others, an issue that appeared highly intractable at this time was the need for endorsement from Air Canada which, as the major tenant of Terminal

291 See *Proceedings*, 9:103.

292 See *Proceedings*, 9:95.

293 See *Proceedings*, 10:20, 10:26 and 10:29.

294 See *Proceedings*, 13:25.

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2, would be directly affected by redevelopment and any attendant costs²⁹⁵. This issue warrants separate attention.

C) The "Air Canada Sandwich"

The Request For Proposals had made proponents responsible for assuring Air Canada that it would enjoy the benefits of its recent investments in Terminal 2 over a normal amortization period, and for negotiating specific arrangements²⁹⁶. As a result, discussions between Paxport and Air Canada had been ongoing, and the Paxport proposal made development work conditional on the signature of a new lease with Air Canada. Air Canada was thus in a position to make or break the deal.

During the early months of 1993, the Air Canada-Paxport discussions appear to have made little progress²⁹⁷. Indeed, during the 3 March 1993 meeting between Paxport and Department of Transport officials, including Mrs. Labelle, Paxport argued that the absence of formal negotiations was undermining Paxport's credibility (and negotiating position) with Air Canada, to the point where the airline was refusing to negotiate seriously²⁹⁸.

When Mr. Broadbent assumed the role of chief negotiator, in mid-March, Mr. Matthews expressed to him the same concerns. Mr. Broadbent recalled being told that Air Canada was behaving as if it had a veto over the deal, and that Paxport was going to need help in dealing with this issue²⁹⁹.

Also raised at the 3 March meeting was the fact that Air Canada, in its discussions with Paxport, was claiming that its lease agreement with the government extended for sixty years, rather than until the 1997 date of the existing lease. Mrs. Labelle advised us that she had been aware, at this time, of Air Canada's position on the "Guiding Principles" document³⁰⁰ for at least a year; however, until the spring of 1993, she had not known of the decision to omit this document from the collection provided to proponents after the issue of the Request For Proposals. This matter appears to have prompted discussion within the department. Minutes of an 18 March meeting held for the primary purpose of introducing Mr. Broadbent to the negotiating team allude to the issue of possible long term commitments³⁰¹.

295 See *Proceedings*, 13:41.

296 See *Proceedings*, 8:50.

297 See *Proceedings*, 13:39.

298 See *Proceedings*, 13:46.

299 See *Proceedings*, 9:90.

300 See Chapter III.

301 Committee document LA 00007.

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According to Mr. Broadbent, several weeks after he had assumed responsibility for the negotiations, he was advised by the Department of Justice official providing legal advice to the negotiating team, of the existence of the 1989 "Guiding Principles" document. As has been seen, this document provided for a twenty-year renewal of the Air Canada lease (otherwise terminating in 1997) and two ten-year extensions. Mr. Broadbent also learned that this document had not been referenced in the Request For Proposals or included in the documents room established for proponents, to whom the Government was legally obliged to disclose it. This development caused great concern, according to Mr. Broadbent, and resulted in significant delays. Aside from introducing a new circumstance with implications for a number of items including the financeability issue, it could have allowed the proponent to argue that the Request For Proposals had been changed retroactively and thereby have rendered redundant everything achieved up to that point³⁰².

As has been seen in an earlier chapter, there had been some apparent uncertainty within the Department about the precise status Air Canada accorded the "Guiding Principles" document, with the prevailing view of officials being that it was no longer legally binding. The Department immediately prepared an estoppel certificate for signature by Air Canada; this would either commit the airline to the existing lease or prompt a clear affirmation of the "Guiding Principles".

The preparation of the estoppel certificate added a further complication, however. In reviewing the lease, Department of Transport officials found that payments required under amendments to the lease had not been collected, and the airline owed the Crown some \$8 million. Broadbent advised financial and audit officials within the department. He expressed his surprise to the Committee that this omission did not seem to have been viewed with particular concern³⁰³.

In response to inquiries from Mrs. Labelle, Air Canada apparently continued to affirm the validity of the "Guiding Principles" document. Thus Transport Canada had to inform the developers of the existence of this document, with its potentially significant implications for the terms on which they would be able to deal with Air Canada. In mid-June of 1993, Mrs. Labelle wrote to both Paxport and Claridge, referring to "an issue which I thought had been addressed, but which may not have been resolved"³⁰⁴. After outlining the negotiation issues that could be affected, the letter stated the Department's view that a capital adjustment payment of \$36 million to Air Canada included in Paxport's proposal would be in lieu of any entitlements created by the "Guiding Principles", and asserted that it would be Mergeco's responsibility to "come to a complete agreement with Air Canada."

302 See *Proceedings*, 9:97-98.

303 See *Proceedings*, 9:99.

304 Huguette Labelle to Jack Matthews, June 9, 1992, Committee document, LA 001553.

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The developers' reaction to this information was predictably hostile, as described by Mr. Coughlin, on behalf of Claridge:

From our perspective, this was devastating. Our entire business plan was based upon being able to negotiate a new Air Canada lease in 1997. This was why we accepted a three year partial rent deferral and why we agreed to undertake a \$350 million development program with no conditions³⁰⁵.

Mr. Hession expressed the Paxport perspective in similar terms; he described the situation as "a shocker," whereby during preceding months Paxport had been required to reach an accommodation with Air Canada in ignorance of an arrangement giving the airline a basis for "high expectations and an effective veto over the negotiations"³⁰⁶.

These developments combined created what became known within the Department as the "Air Canada sandwich." From mid-June onward, the developers were caught in the middle of a dispute between Air Canada and the Department over the status of the Guiding Principles. Depending on which side prevailed, Air Canada was in a position either to strongly influence the initial stages of the agreement by refusing to alter the terms of a lease that would not lapse until 1997, or to make or break the deal as a result of lease entitlements extending for some 40 years.

The lack of progress in discussions between Mergeco and Air Canada, together with these new complexities, prompted Mrs. Labelle, in conjunction with the negotiating team to decide in mid-June that the Department would have to take a more interventionist approach. The two parties were thus invited to work together with the chief negotiator to resolve their issues.

D) Finalizing the Deal

Upon assuming the role of chief negotiator following 15 June 1993, Mr. Rowat found the main elements of the eventual agreement either resolved or close to resolution³⁰⁷. Among issues well advanced, if not entirely concluded, were the definition of the respective responsibilities of the government and the developers for environmental matters, and the clauses providing for the transfer of personnel. Tenant equity and passenger facility charge issues had also been addressed³⁰⁸.

305 See *Proceedings*, 17:14.

306 See *Proceedings*, 8:78 and 9:29.

307 See *Proceedings*, 10:57.

308 See *Proceedings*, 10:77.

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Several issues required more substantial work. Among these were the future of Terminal 1 -- how long it would remain open and how the costs of its continued operation would be shared³⁰⁹. As well, the government had rejected Paxport's original demand for a guarantee that the government would not do anything at other airports that would reduce traffic at Pearson below an annual thirty-nine million passengers. Protection involving a lower threshold and altered conditions remained under negotiation.

Negotiators for the two sides had agreed on an arrangement under which the developers would, during the first three years of the agreement, defer payment to the Crown of \$11 million per year in rent in exchange for spending \$96 million on start-up phase development but without increasing charges to the airlines during the first two years. Certain terms and conditions of this arrangement remained to be agreed, however. Furthermore, according to Rowat, as of mid-June, the settling of arrangements with Air Canada remained the most difficult of the outstanding issues³¹⁰.

As Mr. Rowat assumed the role of chief negotiator, the selection of a new leader by the governing Progressive Conservative Party raised the prospect of changes in ministerial and deputy-ministerial personnel, as well as government policy and priorities. This caused the developer to press for an official statement or memorandum of understanding that would solidify, as far as possible, the results achieved thus far in negotiations and commit the government to completing the process. While departmental officials successfully resisted a legally binding commitment, the two sides did jointly sign a letter, dated 18 June 1993, which provided a mutually agreed statement of the status of negotiations and affirmed the commitment of both parties to resolve remaining issues and finalize project agreements by 15 July if possible. The letter specifically stated that it did not constitute a legally binding agreement³¹¹.

At this time, as well, the multi-track negotiating process established by Mr. Broadbent was replaced with a process of negotiations at a single table³¹². This change reflected the relatively advanced state of negotiations, and the evolving dynamics which this would imply. Issues that could be resolved separately had been largely resolved by this point. An overall agreement would increasingly require trade-offs among the various outstanding items.

To map out systematically the strategy to govern these trade-offs, and to ensure that officials of the Privy Council Office and Treasury Board Secretariat were on-side with the emerging agreement, Mr. Rowat initiated the preparation of a detailed negotiating "black

309 See *Proceedings*, 12:40.

310 See *Proceedings*, 10:57.

311 See *Proceedings*, 10:64-65.

312 See *Proceedings*, 10:67 and 10:69.

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book." Drafts of this document were circulated to the Minister of Transport and departmental and central agency officials, and were finalized on the basis of a series of meetings during the second half of June³¹³.

The black book included a statement of overall negotiating objectives, based on the Request For Proposals. During his appearance before us, Mr. Rowat captured these objectives in three principles: (1) that the agreement leave the government no worse off financially than any of the alternatives, such as continuing to operate the terminal itself; (2) that the airport remain competitive nationally and internationally, with respect to its cost per passenger among other things; and (3) that airlines and passengers not be subjected to onerous charges as a result of terminal development³¹⁴.

The negotiating book also contained status reports and negotiating positions on remaining issues, including the Air Canada issue. The government's negotiating position appears to have been to maintain that "while no disclosure was made of the Guiding Principles in the Data Room," the Request For Proposals had adequately dealt with the issue by requiring proponents to respect the existing Air Canada lease and negotiate the terms and conditions of development with the airline. Government negotiators would focus on pressing Air Canada to conclude an agreement with Mergeco, using as leverage the fact that, in the absence of such agreement, the government on its own could conclude agreements with Mergeco that would result in cost increases to Air Canada after the lapse of its existing lease. This approach reflected Mr. Rowat's view that the status of the Guiding Principles document was not as clear-cut as some, including his predecessor, had thought. Air Canada had been provided with drafts of the relevant section of the Request For Proposals before its release and had raised no objection to the absence of a reference to the 1989 document³¹⁵.

Mr. Rowat's view was that Air Canada had three basic objectives. It wanted to be compensated for the undepreciated balance of some \$65 million invested in Terminal 2 in recent years. The airline also wanted to avoid cost increases during the period before 1997; its financial condition was fragile, and reassuring traffic forecasts developed by Transport Canada were regarded as overly optimistic. As well, while recognizing the need for development, Air Canada wanted to ensure that cost increases after 1997 would allow the per passenger costs of Terminals 1 and 2 to remain competitive with those for airlines in other terminals³¹⁶.

On 28 June 1993, reflecting the more interventionist approach to Air Canada/Mergeco negotiations adopted by the Department in mid-June, Mr. Rowat attended

313 See *Proceedings*, 10:67 and 10:69.

314 See *Proceedings*, 10:88.

315 See *Proceedings*, 11:28.

316 See *Proceedings*, 11:29.

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a meeting between the two parties in order to observe their direct attempts to reach agreement. He also met separately with each of the parties. These meetings confirmed his assessment of Air Canada's concerns, and his view that the airline was using 1989 Guiding Principles document primarily as a source of negotiating leverage³¹⁷. According to Mr. Rowat, he communicated his assessment of the situation to Minister Corbeil and sought direction³¹⁸.

During the ensuing two weeks, at Minister Corbeil's direction, Mr. Rowat worked with Air Canada and Mergeco to develop a possible solution, which was taken back to Minister Corbeil³¹⁹. Minister Corbeil's comments would suggest that the general approach outlined in the negotiating books ("...it's not our baby, it's your baby,") continued to be followed, despite Mr. Rowat's involvement as a facilitator. During his appearance, before the Committee, the Minister focused on the result, which he described as fully meeting government objectives³²⁰.

According to Mr. Rowat's more detailed comments, the mid-July agreement between Mergeco and Air Canada made possible a development agreement that left the government in a better position, with respect to returns to the Crown, than the next best alternative, the base case, or construction by the Crown option, of which the department had prepared an analysis³²¹. The results of the analysis were subsequently made available to Mr. Nixon in a 4 November 1993 memorandum, which stated the following "bottom line" conclusion:

In order for the Crown Construct Option to generate revenues equivalent to the Private Sector Lease, a 10% (per annum) real growth would have to be assumed. Under government management in the past growth in revenues has been at or below inflation.

Since growth at the rate of inflation is equivalent to no "real" growth, the base case analysis clearly favoured the private sector lease option, from the perspective of revenues to the Crown.

The development of a base case analysis also involved comparing estimates of the net present value to the Crown of the terminals under Crown Construct and private sector lease scenarios. These comparisons clearly supported Mr. Rowat's assessment. For example, terminal revenue assumptions which would generate a Crown Construct value of \$227

317 See *Proceedings*, 10:74.

318 See *Proceedings*, 10:74 and 11:29.

319 See *Proceedings*, 12:4-5.

320 See *Proceedings*, 21:33.

321 See *Proceedings*, 10:77 and 12:8.

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million result in a private sector lease value of \$555 million, while assumptions generating a Crown Construct value of \$595 million raise the value to the Crown of the private sector lease option to \$843 million.

According to Mr. Rowat, the agreement also reduced the overall rate of return to Pearson Development Corporation (the name the Mergeco joint venture had by this time assumed) from what had originally been proposed. Pearson Development Corporation (PDC) reduced the capitalization rate to the airlines, as well as agreeing to provide ten per cent of its net concession revenues to the airlines using Terminals 1 and 2. **These were seen as major concessions by Mr. Rowat, reflecting that everybody had "put a bit of water in their wine in order to conclude the final agreement"**³²².

For its part, the government had agreed to changes to its ground rent, notably the deferral of \$11 million per annum in rental payments during each of the first three years. This assisted the developers in offering an attractive package to Air Canada³²³. Still to be resolved was the term over which the developers would repay the deferred rent. The developers had initially sought to have this term extended over the residual of the agreement, which would have been upwards of fifty years; however, a mid-May meeting of deputy ministers rejected this option lest it create the impression of a continuing government subsidy. The government negotiators thus insisted upon a ten-year repayment period, with payments to be made at a rate of interest of prime plus 2.5%³²⁴.

By July 1993, negotiations had apparently progressed to the point where their completion and a closing date for the deal could be envisioned. Mr. John Desmarais, of the negotiating team, and Mr. Peter Coughlin agreed on 7 October 1993 as a reference point for ensuing activities³²⁵. **Mr. Coughlin has said that a date was identified to prevent the lawyers from protracting negotiations indefinitely**³²⁶.

It was now possible for Deloitte & Touche to report formally its assessment of the financial elements of the deal. The report took the form of a letter dated 17 August 1993, from Mr. Paul Stehelin, President, Deloitte & Touche, to Mr. Rowat. Its findings reflected the somewhat broadened mandate under which the firm had been working since its March report on the financeability of the Paxport proposal.

322 See *Proceedings*, 10:77.

323 See *Proceedings*, 11:30.

324 See *Proceedings*, 12:7.

325 See *Proceedings*, 12:42.

326 See *Proceedings*, 17:78.

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A favourable assessment is given of the financeability of the PDC proposal, based on financial projections developed by PDC in late July, taking into account arrangements established during negotiations. While approving the presence of Claridge and Terminal 3, the report cautions that the long-term nature of the project will make lenders base their willingness to finance later phases of the project on the performance of the developers during the earlier phases, especially the first four years³²⁷.

Several other issues were also addressed. Noting that the transaction had changed substantially since the Price Waterhouse July 1992 estimate of commercial opportunity, Deloitte & Touche provided a new estimate. The net present value of the ground lease was placed at between \$800 million and \$900 million³²⁸.

The rate of return to the developer was estimated at 14%. This falls in the middle of the 12% to 16% range of after-tax rates of return found to be reasonable given the nature of the project, although the difficulty of identifying an appropriate basis of comparison is noted³²⁹.

It was also stated that a number of non-quantitative considerations should qualify any judgment about the rate of return: returns to the developer would have been virtually nil during the first 10 years, would not have become substantial until after twenty years, and would have been subject to erosion by tax increases; later phase investments by the developers, needed to maintain the terminals to world class standards, were not included in the developers' financial projections; and special risks associated with non-airline revenues, and with the possibility that slower than anticipated economic recovery might delay construction and increase costs. Furthermore, unlike a utility, Pearson Development Corporation would not have been able to pass all cost increases on to consumers³³⁰.

E) The Central Agencies

With the agreement broadly finalized and an independent assessment of its financial elements in place, the package was ready to go to Treasury Board for final scrutiny by Treasury Board Ministers. The decisive role played by Treasury Board during this final phase is the culmination of the gradual shift towards greater involvement by central agency officials that had been apparent since before the commencement of formal negotiations. This shift reflects the underlying reality that, while ministers and their officials develop initiatives (normally on the basis of cabinet agreement), the government, or ministers collectively, will be held accountable for these and must ultimately decide whether or not to proceed with

327 Report from Deloitte & Touche by Paul Stehelin, Committee document LA 002492, p. 1-3.

328 *Ibid.*, p. 6.

329 *Ibid.*, p. 6-8.

330 *Ibid.*, p. 7.

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them. The role of central agency officials during the discussion/negotiation phase of the process was essentially to ensure that potential concerns of ministers outside the Department would be addressed so that ratification by Treasury Board and Cabinet could proceed smoothly.

The importance the government ascribed to the Pearson Airport redevelopment project was apparent, during the period beginning in November 1992, in exchanges of memoranda and notes between the Prime Minister and Mr. Shortliffe, then Clerk of the Privy Council, which we have reviewed. According to Mr. Shortliffe, the government viewed the Pearson project as a priority item, which it wanted completed before it left office, and the Prime Minister maintained a keen interest in the file³³¹. The Clerk of the Privy Council's role in keeping the Prime Minister apprised of developments required, in turn, the relatively close involvement of Privy Council Office officials. Meetings including officials from the Treasury Board, as well as Privy Council Office, took place on a weekly basis throughout much of this period³³². In many cases these meetings were actually convened by the Privy Council Office at the request or on behalf of the Deputy Minister of Transport³³³.

As has been seen, in addition to monitoring developments, the Clerk of the Privy Council operated from time to time as a key advisor and/or facilitator. For example, with respect to changes of personnel, the advice of the Clerk appears to have been significant in decisions of the Deputy Minister of Transport, Mrs. Labelle, and the Privy Council's provision of Mr. Rowat to replace Mr. Broadbent solved what could have been a difficult problem towards the end of the negotiations. A further example was suggested by Mr. Shortliffe in relation to the formation of the joint venture initially named Mergeco. Mr. Shortliffe and other Privy Council Officials, during the spring of 1993, came to the view that the success of Paxport and ATDG's attempts to form a joint venture was critical to viability of the redevelopment project; accordingly, they worked to encourage that development³³⁴.

Treasury Board officials at these and related meetings behaved in a more adversarial way, in keeping with the internal challenge role played by the ministers on the Treasury Board. Mr. Mel Cappe, now Deputy Minister, Environment Canada, was Deputy Secretary of the Program Branch, Treasury Board Secretariat (TBS) during this period and gave us the following succinct description of the contribution of TBS officials:

They raise issues and questions for ministers and officials to ensure that they're taken into account in the decision-making process. Their objective is to ensure that all the right questions have been asked and that ministers have

331 See *Proceedings*, 24:68 and 24:107.

332 See *Proceedings*, 24:80.

333 See *Proceedings*, 10:58.

334 See *Proceedings*, 24:78.

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adequate information with which to come to a judgement on a file. In most departments across the government, the TBS is viewed as a necessary evil³³⁵.

Reflecting upon Treasury Board officials' behaviour with respect to Terminals 1 and 2 redevelopment project, Mr. Cappe's conclusion was: "...I'm satisfied that we did our job"³³⁶. A review of a series of memoranda recording the questions of Treasury Board officials and a discussion of these documents with officials of both Treasury Board Secretariat and the Department, leads us to concur in Mr. Cappe's opinion. As it took shape during the negotiations, the Pearson Airport deal received extremely close scrutiny from Treasury Board officials.

The complexity of the file, the prospect of public controversy, and concerns that the government appeared to be addressing terminal, runway and other individual issues at Pearson without any overall vision led some Treasury Board officials, by March of 1993, to believe that the file was extremely "messy." According to Mr. Cappe, it was generally believed that it would be preferable to pass the whole matter over to a local airport authority³³⁷. At the same time certain Treasury Board officials believed that the process seemed to be somewhat stalled, with the financeability and Air Canada issues unresolved. The probability of further delay, combined with apparent progress towards a viable local airport authority in Toronto, appeared in their view to make the local airport authority route newly feasible, even though no authority had yet been formed³³⁸.

Considerations of cabinet confidence have precluded our access to detailed information about how ministers learned of this challenge to the project and how it influenced deliberations. It seems likely, however, that Treasury Board ministers considering the agreement achieved by mid-August would be receiving advice on any Treasury Board concerns not already overtaken by events. For example, concerns about a stalled process, and unresolved issues of financeability and concurrence on the part of Air Canada, would no longer be immediately relevant as of mid-August, although, as will be seen below, concerns about political controversy and the status of attempts to form a local airport authority would be strongly so. Until at least late July 1993, Treasury Board officials maintained a preference for fast-track negotiations with a local airport authority, although recognizing that such a course might not be possible unless the negotiations with Pearson Development Corporation were to collapse³³⁹.

335 See *Proceedings*, 14:10.

336 See *Proceedings*, 14:11.

337 See *Proceedings*, 14:33.

338 See *Proceedings*, 14:34-35.

339 See *Proceedings*, 14:77.

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Sometime during mid-August, Treasury Board ministers received the formal submission from the Department of Transport detailing the agreement reached with Pearson Development Corporation, along with the analysis developed by Secretariat officials³⁴⁰. Later in August, Treasury Board gave the agreement approval which was forwarded to cabinet. On 27 August 1993, cabinet issued the Orders in Council authorizing the Minister of Transport to enter into lease and development agreements with the Pearson Development Corporation³⁴¹.

Still outstanding at this point were the public announcement of the agreement, the preparation of finalized lease and other contractual documents by the Department of Justice (whose officials would also ensure that no material change had taken place during this phase), the signing of these documents by the appropriate parties, and the closing of the deal.

F) Lobbyists

Following the announcement of a Best Overall Acceptable Proposal, lobbying firms continued to be engaged by both developers. After 5 May 1993, when the Claridge bid was withdrawn, the firms that had worked for the competing consortiums joined together in support of Pearson Development Corporation.

(i) Paxport

As has been seen, the selection of the Paxport proposal as the Best Overall Acceptable Proposal in December of 1992 led directly to continuing discussions between officials of Paxport and the government. This had implications for the Paxport lobbyists, who no longer needed to serve as a communications link between their client and the officials immediately involved in the process.

Mr. Neville, who coordinated the Paxport lobbying effort, provided no specific description of lobbying activities during the discussion/negotiation phase. His claim that it would have been improper to attempt to influence decision-makers once the formal evaluation process was underway may suggest, however, that lobbying during the negotiation period focused on building broader support for the redevelopment project and providing strategic advice to the client³⁴².

Mr. Pascoe, of A.D. Pascoe and Associates, indicated to us that he continued to represent Paxport during this period, under terms of reference which provided for contacts with groups outside the federal government. He did, however, confirm our documentary

340 See *Proceedings*, 14:73.

341 See *Proceedings*, 14:62.

342 See *Proceedings*, 16:18.

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evidence that he also accompanied Mr. Hession to one meeting with federal officials relating to the Terminals 1 and 2 redevelopment project, in January of 1993³⁴³.

(ii) Claridge

As with other phases of the process, our central sources of information about Claridge lobbying activities following the announcement of the Best Overall Acceptable Proposal were Mr. Harry Near and Mr. Bill Fox, who led Earncliffe Strategy Group's contribution to the Claridge effort.

According to Mr. Near, the chief activity in the period of discussions between the government and Paxport was the monitoring of Paxport's compliance with the government's pre-negotiation requirements³⁴⁴. This reflects the fact that the Claridge proposal had not been withdrawn at this time, and remained available to the government as an alternative, had discussions with Paxport broken down. In addition, Mr. Fox mentioned the preparation of media relations materials and media monitoring³⁴⁵.

During the formation of the joint venture, according to Mr. Near, there was very little for the lobbyists to do. The issue at that time was whether a workable joint venture could be formed. When success appeared likely, Earncliffe contributed to the preparation of a presentation on the advantages of a joint venture approach, which was used in contacts with officials, editorial boards and other interested parties³⁴⁶. In general, however, the negotiations phase was a fallow period for lobbying; the participants were working directly together behind closed doors, and anyone who needed to know anything was already in the negotiating room³⁴⁷.

Activity increased during August 1993, during preparations for the public announcement of the agreement. According to Mr. Fox communications activity at this juncture was "particularly intense"³⁴⁸. A press release was developed and, beginning at the end of August, quantitative public opinion research was undertaken in the Toronto area to develop an advertising strategy to respond to concerns about the deal³⁴⁹.

343 See *Proceedings*, 16:50.

344 See *Proceedings*, 15:82.

345 See *Proceedings*, 15:82.

346 See *Proceedings*, 15:82-83.

347 See *Proceedings*, 15:113.

348 See *Proceedings*, 15:113.

349 See *Proceedings*, 15:113-114.

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Mr. Herb Metcalfe, of the Capital Hill Group which worked with Earnscliffe for Claridge, provided an overview of activities during the negotiation phase which broadly paralleled that of Mr. Fox and Mr. Near³⁵⁰.

G) The Deal is Announced

On 30 August 1993, having obtained the authorization of Cabinet to proceed with the finalization and signing of its legal documentation, Minister Corbeil officially announced the agreement. The announcement ceremony, which also involved Ministers Lewis, Wilson and Martin, municipal mayors and officials, and the developers, took place in Toronto³⁵¹.

Background information released at the time of the announcement summarized the main points of the six major agreements: the ground lease, option to lease, development agreement, management and operations agreement, employee transfer agreement, and management and services agreement.

The first three of these contained most of the provisions of central public policy interest. The ground lease terms were described, including the initial term of 37 years, with a 20-year renewal option. The government retained an option to buy out the renewal option at market rates, three years before the termination of the initial lease term.

The formula governing rental payments to the government guaranteed a minimum payment of \$28 million during the first year, with provisions for increases based on inflation, passenger volume and gross revenue growth. This figure was contrasted with the \$23.6 million in net revenue then being received by the government from Terminals 1 and 2. It was noted that this rate of return reflected a balance between dollar return considerations and the need to avoid excessive costs to the airlines or charges that would make Pearson uncompetitive with other major hub airports. The major non-quantitative benefit to the government was said to be redevelopment of the terminals without government financing or guarantees.

Also mentioned were the rent deferral provisions of the agreement, under which the government agreed that \$33 million in rental payments due during the initial years would be postponed so that development could go ahead immediately, without short-term cost increases to the airlines. Reimbursement of this money, with interest, would begin in the fifth year of the lease.

The passenger diversion arrangement which the Government and Pearson Development Corporation had ultimately agreed upon was also mentioned. This

350 See *Proceedings*, 15:125.

351 See *Proceedings*, 21:32.

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arrangement protected the developer of the Pearson terminals from serious reductions in passenger volume and revenues resulting from government expansion of nearby airports. It involved a commitment from the government to avoid actions at airports within a 75 km radius which would reduce Pearson traffic below a 33 million passenger per year floor. The arrangement was subject to a provision which responded to the fact that diversions affect blocks of passengers, rather than being incremental. The provision permitted diversions of up to 1.5 million passengers below the threshold before requirements for compensation of the developers would become operative.

As well, the respective roles arrived at concerning environmental responsibilities were set out. The government would continue to assume responsibility for soil and groundwater contamination which had occurred before the commencement of the lease, while the developer would take on these responsibilities as of the commencement date.

The central features of the development plan were described as the overall dollar value of \$700 million, and the fact that development would take place in four phases, the final two being triggered by the attainment of passenger volume thresholds. As well, Terminal 1 would eventually be replaced with a terminal building "finger" extending from an expanded terminal.

While the announcement expressed optimism that development costs would be covered by airline and concession revenues, it also described the provisions in the agreement permitting the introduction of a "passenger facility charge" or PFC. A PFC is a fee paid by each passenger using the facility, and such charges are levied for the purpose of financing development by, for example, the Vancouver Local Airport Authority. In the Pearson agreements, the levying of a PFC was made subject to government approval and was permitted only in circumstances where development was required but airlines were unable to absorb the rent increases needed if developers were to finance it from the rental revenue stream. According to Mr. John Desmarais of the Department, under the Pearson agreements airlines would have had to be bankrupt before Pearson Development Corporation would have been in a position to levy a PFC³⁵².

Also outlined were the management, operational and employee transfer arrangements, whose notable features were a cost-based pricing policy for the airlines, the transfer of 160 Transport Canada employees in Terminals 1 and 2 under provisions that preserved pay and benefits, and the guaranteed employment.

The economic benefits of the redevelopment agreement were emphasized by the Hon. Jean Corbeil and his ministerial colleagues on the day of the announcement. Minister Corbeil was quoted, in the press release of 30 August 1993, as declaring that the project

352 See *Proceedings*, 12:63.

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would "...make Pearson International Airport an attractive and efficient world-class gateway for the Canada and North America." The Hon. Doug Lewis referred to the "shot in the arm" which a \$1.1 billion investment (including runway development and the terminal redevelopment project) would give to the Toronto construction industry and the regional economy.

Following the announcement, the initiative passed to officials of the Department of Justice, who were involved in drafting the legal text of the agreements. As well, certain agreements remained to be finalized as negotiations wound down.

H) Local Airport Authority Issues

During the negotiation of the agreements, there had been another cycle of discussion and activity relating to the formation of a Toronto local airport authority, and its quest for federal recognition.

In a letter dated 9 March 1993, the Greater Toronto Regional Airport Authority (GTRAA) had advised Minister Corbeil of its formation and anticipated incorporation as a non-profit organization. In response to earlier ministerial requirements for evidence of the support of affected municipalities, the letter was accompanied by summaries of the resolutions of the regional and municipal councils participating in the GTRAA. It provided, as well, a list of its 10 appointed Directors. The letter requested that the federal government proceed with the recognition of the GTRAA as a Local Airport Authority and meet with its representatives to clarify any remaining issues³⁵³.

According to Robert Bandeen, who became the Chair of the GTRAA in the spring of 1993, the prevailing view among board members at that time was that "...we were set up and ready to go" with a board, financing, and technical advisors in place³⁵⁴. Mr. Bandeen wrote to the Minister of Transport in early May, asking for an urgent meeting and for formal recognition by the federal government so that the process of negotiating the transfer of Pearson Airport could begin.

The reply to the GTRAA's initial letter from Minister Corbeil, dated 6 May 1993, requested unconditional resolutions of support from the five regions and the major municipalities, just as the Minister had requested from GTRAA representatives in a meeting outlined by Mr. Michael Farquhar, then head of Transport Canada's Airports Transfer Task Force³⁵⁵. At this meeting, the Minister had also indicated concerns about some of the

353 See *Proceedings*, 5:61.

354 See *Proceedings*, 5:29.

355 See *Proceedings*, 7:47-48.

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resolutions which had already been passed by various councils in the Toronto area and communicated to him.

On 17 February 1993, the City of Mississauga had passed a resolution supporting the formation of a Local Airport authority, and affirming a 26 November 1992 resolution of the Regional Council of Peel (of which Mississauga is a member) endorsing the recommendations of a report calling for the formation of a Local Airport Authority. Mr. Bandeen and the GTRAA felt that these resolutions confirmed the support of Mississauga for their initiative³⁵⁶.

On 25 February 1993, however, The Regional Council of Peel had passed a further resolution affirming support for the transfer, to a Local Airport Authority, of "...primarily and firstly Lester B. Pearson International Airport and Toronto Island Airport together"³⁵⁷.

There was thus a clear basis for the concerns expressed in Minister Corbeil's letter of 6 May 1993 that affected municipalities had not reached the needed level of agreement. Federal concerns could only have increased when, on 13 May 1993, the Regional Council of Peel passed an additional resolution indicating that "...the Region of Peel strongly opposes the transfer of the Lester B. Pearson International Airport without assuming at the same time the Toronto Island Airport"³⁵⁸.

On 13 May 1993, at a meeting between the Minister of Transport and Mr. Bandeen, Mr. Bandeen, according to government officials, agreed to provide the Minister with resolutions from the affected municipalities expressing support, without qualification or reservation, for the establishment of a local airport authority to manage Pearson Airport.

On 15 June 1993, a letter to the Minister from Mr. Bandeen called for immediate recognition of the GTRAA and its involvement in negotiations for redeveloping the terminals and other issues, in part so as to dispel "speculation" that "...recognition is being withheld so that a local airport authority will not have any input into these matters"³⁵⁹. The letter listed the various councils that had provided clarified resolutions of support, and went on to refer to the Mississauga resolution of 17 February as evidence of Mississauga's support. It added that the Mississauga Council's consideration of a request for a clarifying resolution had been deferred because of controversies triggered by runway expansion issues³⁶⁰.

356 See *Proceedings*, 5:51.

357 See *Proceedings*, 7:48.

358 See *Proceedings*, 7:48.

359 See *Proceedings*, 21:50.

360 See *Proceedings*, 7:49.

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According to Mr. Farquhar, correspondence had been drafted for the Minister's signature in the expectation that a satisfactory resolution would be forthcoming from Mississauga around 24 June 1993; however, this was never received. A draft covering note to the Minister stated that the correspondence should only be finalized after receipt of the Mississauga resolution: "Even if the Regional Municipality of Peel reconfirms its former resolutions on the proposed Toronto Island Airport transfer, it would still be appropriate to endorse the GTRAA in light of our recent experience in Edmonton"³⁶¹. According to Mr. Farquhar, the Edmonton experience had been one of additional complications arising from an attempt to transfer two airports at once, suggesting that the focus of the GTRAA on managing only Pearson would be preferable. More broadly, the note was described as an example of the various views, options and suggestions which officials normally provide a minister, who considers them along with advice from political advisors and colleagues in arriving at an independent decision³⁶².

Minister Corbeil did not send the correspondence, but rather met with both Mr. Bandeen and Mississauga Mayor Hazel McCallion in early July, 1993. At these meetings, he reiterated the need for consistent resolutions of unconditional support. He urged the Mayor of Mississauga to provide a resolution endorsing the formation of a Local Airport Authority for Pearson Airport, worded so as not to preclude the possibility of the subsequent transfer of Toronto Island. These meetings were followed up with letters dated 11 August 1993 which again repeated the Minister's position, and stated his commitment to endorse the GTRAA if Mississauga would provide the requested resolution of unconditional support³⁶³.

In return, the Minister received a letter from Mr. Bandeen dated 18 August 1993. This argued that the 17 February 1993 Council of Mississauga resolution already gave the unconditional support requested, but went on to say:

The directors of the GTRAA understand that the Mayor of Mississauga is not prepared to support the revision of the resolution you requested as she would like both LBPIA (Pearson Airport) and Toronto Island Airport to be contemporaneously transferred to, and operated by, a local airport authority³⁶⁴.

This is how matters stood until the Pearson Agreements were signed. Correspondence from the Minister to Mr. Bandeen on 7 October 1993 suggest that little progress was achieved during the remainder of the summer. Indeed, as Mayor McCallion informed us

361 See *Proceedings*, 7:50.

362 See *Proceedings*, 7:53.

363 See *Proceedings*, 7:50.

364 See *Proceedings*, 7:51.

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during her subsequent appearance, the Mississauga Council did not withdraw its requirement for Toronto Island Airport to be included in the transfer until 1994.

Mayor McCallion's testimony indicated the nature and degree of personal and political conflict besetting attempts to form a local airport authority in 1993. Her antipathy towards the GTRAA was apparent in her references to the "illegal airport authority"³⁶⁵, and in her caustic assessment of the role of its Chairman, Mr. Bandeen: "I can assure you, Mr. Bandeen was the problem"³⁶⁶.

As of early October 1993, Minister Corbeil's view was that Mississauga was by no means on-side. Mayor McCallion's insistence that Toronto Island be included had not evaporated³⁶⁷. At the same time, the City of Toronto was strongly against the inclusion of Toronto Island under the jurisdiction of a Local Airport Authority³⁶⁸.

There was thus a high probability that a local authority established at this time would have been seriously hamstrung by disagreements over its proper scope. Minister Corbeil also had to recognize the reality that the effective functioning of Pearson Airport was critically dependent on the cooperation of Mississauga, given that its lands are almost entirely within Mississauga's boundaries. The possible significance of this was made very clear by Mayor McCallion during our hearings. She had resolved disputes with the builders of Terminal 3 over the payment of levies and other matters by telling them that if Mississauga's requirements were not met, they had better plan to "...build the largest septic that they could find for Terminal 3 because we would not hook them up to either the sewage system or water"³⁶⁹.

Also, the Minister felt that it would have been unreasonable to set aside the fifteen months of work following the release of the Request For Proposals in order to pursue negotiations with a local airport authority that had not yet been set up, and which might require a considerable period before becoming operational, just because Mr. Bandeen had doubts about the ability of the government to negotiate a good agreement with the developers³⁷⁰.

Members of the GTRAA believed, as has been seen, that they were ready to proceed following incorporation in the spring of 1993, and that officials in the Department of

365 See *Proceedings*, 20:7.

366 See *Proceedings*, 20:8.

367 See *Proceedings*, 21:62.

368 See *Proceedings*, 21:55.

369 See *Proceedings*, 20:06.

370 See *Proceedings*, 21:62.

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Transport supported their recognition³⁷¹. Their broader concern was that, in the event of recognition, they would have to live with an agreement reached by Transport Canada and the developers, without their participation³⁷². This concern may have been exacerbated by reports from Mr. Chern Heed, then manager of Pearson Airport. He was described as being "extremely upset" by the agreements taking shape in late summer of 1993. GTRAA's attempts to obtain recognition were not abandoned in the face of these developments, however, and discussions were held with the federal government on possible revenue-sharing among other matters³⁷³.

In the early days of the 1993 election campaign Mr. Bandeen took his concerns to the media. In the *Toronto Star* of 26 September, for example, he described the government's handling of the Pearson terminals issue as "really scandalous," a phrase that Mr. Bandeen acknowledged under questioning might have reflected a degree of "over-exuberance"³⁷⁴.

According to Minister Corbeil, the rising tide of criticism of the Pearson Airport agreements which surfaced in the media during September and October 1993 was chiefly due to the efforts of one disaffected individual. In the Minister's view, the public interest was largely ignored in this effort, which focused on "the position which this person would eventually be able to occupy if the local airport authority were established, and which could restore the position of command which he had gloomily occupied several years before"³⁷⁵.

D) Closing Issues

The completion of negotiations, finalization of the agreements and the drafting of the required legal documents proceeded during September 1993³⁷⁶. According to the chief negotiator for the government, Mr. Bill Rowat, there were no material changes from the agreement in principle had been announced at the end of the previous month³⁷⁷. Any such changes would have necessitated repeating the process of obtaining the ratification of final agreements by Treasury Board which had taken place in August³⁷⁸.

As controversy over the deal mounted in Toronto, it became an issue in the federal election campaign, culminating with the 5 October 1993 declaration by then Leader of the

371 See *Proceedings*, 25:29.

372 See *Proceedings*, 5:40.

373 See *Proceedings*, 9:54.

374 See *Proceedings*, 9:41 and 21:95.

375 See *Proceedings*, 21:94.

376 See *Proceedings*, 10:57 and 11:61.

377 See *Proceedings*, 10:84.

378 See *Proceedings*, 12:41.

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Opposition, Jean Chrétien that, if elected, a Liberal government would review the deal. During this period, as well, there appears to have been rising concern among federal officials about the political sensitivity of the issue, accompanied by a recognition of the need to prepare for a possible review of their own contributions to it. Apprehension about how the new government would treat public servants who had been involved may have been an additional factor³⁷⁹.

According to Mrs. Bourgon, then Deputy Minister of Transport, political direction was sought twice following the issue of the Writs of Election: once from the Minister of Transport and once from the Prime Minister. This reflected her view that a general rule of government conduct is to act with caution following the dissolution of Parliament. Special efforts were thus appropriate to ensure that elected officials had the opportunity to determine the implications of this rule for the Pearson agreements, and that it was in fact the wish of the government to proceed with the deal³⁸⁰.

The first request for direction was made to the Hon. Jean Corbeil in late September. While Mrs. Bourgon refrained from disclosing the nature of this confidential discussion, it is likely to have focussed on whether or not the Minister wished to proceed with the signing of the major lease documents, as authorized in late August by Cabinet³⁸¹.

These documents were signed by the Minister on 4 October 1993, having been signed by Pearson Development Corporation officials the previous day³⁸². According to Minister Corbeil, he received no advice suggesting the need for special caution because Parliament had been dissolved, or raising concerns about the constitutionality of signing the lease documents during the election period³⁸³. It was his opinion that a legally enforceable agreement had come into existence in August, when Treasury Board had approved it, and cabinet had authorized the signing of the relevant documents. In the Minister's eyes, all to be dealt with in October was the completion of legal formalities and the related paperwork³⁸⁴.

The second request for direction reflected developments in the election campaign, and related to the signing, scheduled for 7 October 1993, of the final group of documents involved in closing the deal. On 5 October 1993, Liberal Leader Jean Chrétien requested in a speech that the Prime Minister put the Pearson Airport deal in the freezer until after the election; on the following day he declared that an elected Liberal government would

379 See *Proceedings*, 19:65.

380 See *Proceedings*, 19:57 and 19:59.

381 See *Proceedings*, 19:56.

382 See *Proceedings*, 12:40.

383 See *Proceedings*, 21:98 and 21:100.

384 See *Proceedings*, 21:00.

immediately proceed to review the deal. These statements prompted Mrs. Bourgon to contact Mr. Glen Shortliffe, then Clerk of the Privy Council, about the possibility that prime ministerial direction would be appropriate, given that Prime Minister Campbell's prospective successor was calling on the government to alter its signing schedule³⁸⁵.

Mr. Shortliffe testified that, given the political contentiousness of the issue, he had agreed with Mrs. Bourgon that the Prime Minister should be consulted³⁸⁶. He stressed that the need for consultation arose from the political circumstances; it did not imply that officials believed that signing the final documents during an election campaign might be legally or constitutionally inappropriate³⁸⁷. Mr. Shortliffe's view was that the constitutional powers the government remain unfettered during an election and prior to a defeat at the polls, but that the regular processes of cabinet decision-making are suspended and new initiatives would not normally occur³⁸⁸. Mrs. Bourgon also believed, that the dissolution of Parliament for an election does not affect the legal powers of a government but that officials must act with caution after this point, and must be careful to reflect judgements from the political level about the limits of appropriate government action³⁸⁹.

Also, while officials believed that the government retained the capacity to abandon the deal as late as 7 October 1993, they saw such a decision as raising issues of legal liability³⁹⁰. According to Mr. Shortliffe, the deal had been made in late August, although it would not become effective until expressed in contractual documentation³⁹¹. Discussions with legal counsel within the Privy Council Office led him to believe that a "very high" legal liability had been incurred even before the signature of the lease documents on 4 October 1993³⁹².

Mrs. Bourgon prefaced her comments to the Committee by stressing that she is not a lawyer and that her views did not reflect specific legal advice. She believed that some degree of legal liability of the Crown was incurred as early as 18 June 1993, when the letter of intent was jointly signed with the developers, and that such legal liability had increased as subsequent steps, such as the 27 August Order in Council, were taken. The degree of liability incurred at any point, however, could only have been established definitively by the courts.

385 See *Proceedings*, 19:59.

386 See *Proceedings*, 24:70.

387 See *Proceedings*, 24:98.

388 See *Proceedings*, 24:100-101.

389 See *Proceedings*, 19:60.

390 See *Proceedings*, 24:71.

391 See *Proceedings*, 24:69.

392 See *Proceedings*, 24:72.

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Following his consultation with Prime Minister Campbell, on 7 October 1993 Mr. Shortliffe instructed Mrs. Bourgon to proceed. She, in turn, sent a fax to Mr. Rowat, who on 4 October had been delegated by Minister Corbeil to sign the remaining documents. The fax advised Mr. Rowat that Prime Minister Campbell had instructed Mr. Shortliffe to proceed with the signature of remaining legal documents relating to the Pearson agreement at 2 p.m. on 7 October 1993; that Minister Corbeil had been advised of this instruction and agreed; and that Mr. Rowat was thus authorized to sign the relevant documents³⁹³.

Nineteen documents were to be signed on 7 October 1993. They consisted of four relating to conditions precedent to the closing of the Pearson contract, fourteen documents relating to short forms of the agreements already signed and ancillary agreements addressing minor operational matters, and a final document authorizing the release of documents placed in escrow. After signing all but the last, Mr. Rowat turned these over to the escrow agent, from the firm of Cassels Brock & Blackwell, who dealt with them according to the terms of escrow.

Mr. Rowat, after determining that the documents were in order and that the conditions precedent to release from escrow had been met, signed the Authorization to Release Escrowed Documents. According to Mr. Rowat, the Pearson agreement was concluded when, and only when, this final document had been signed both by himself and Mr. Coughlin, on behalf of the developer (22 September 1995 letter from William Rowat to Senator Finlay MacDonald). The signing of the release from escrow was done at around 4 p.m. on the afternoon of 7 October 1993, at which point, the Pearson deal became a contactual reality³⁹⁴.

3. Observations and Conclusions

A) Process

As at earlier stages, we systematically asked officials who had had significant responsibilities at this stage for their views on the process. In particular, we asked them to state their personal opinions on whether their work had been compromised by requirements for speed, whether their work had been subjected to interference from the political level, whether lobbyists had influenced their decisions and whether, more generally, they were satisfied that the requirements of due process had been met.

Without exception, responsible officials affirmed the integrity of the process and of those who had participated. The process following the announcement of the Best Overall Acceptable Proposal, including discussions to resolve pre-negotiation issues,

393 See *Proceedings*, 10:75.

394 See *Proceedings*, 22:141.

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negotiations, cabinet approval and signature of the contracts was endorsed by, in particular, the Hon. Jean Corbeil, Minister of Transport during this period³⁹⁵; Mrs. Huguette Labelle, Deputy Minister until 25 June 1993³⁹⁶; Mrs. Jocelyne Bourgon, Deputy Minister after 25 June³⁹⁷; Mr. Ran Quail, Chief Negotiator during January and early February; Mr. David Broadbent, Chief Negotiator from 12 February 1993 to 15 June 1993³⁹⁸; and Mr. William Rowat, Associate Deputy Minister of Transport through this period and chief negotiator from 15 June 1993 until 7 October 1993³⁹⁹.

It should be noted that Mr. Broadbent's strong affirmation of the integrity of the process and the people involved was accompanied by his opinion that, from a technical point of view, the process was flawed by the unsettled status of the Guiding Principles and the forty-year lease extension to which Air Canada had perceived the government to be committed when the Request For Proposals was issued. In Mr. Broadbent's view, this added needless complexity and several months to the negotiations⁴⁰⁰.

Unqualified endorsements of the integrity of the process were also obtained from Mr. Glen Shortliffe, Clerk of the Privy Council during this period⁴⁰¹; and Mr. Mel Cappe, the senior Treasury Board participant⁴⁰². As well, Mr. Stehelin of Deloitte & Touche indicated that he had not been subject to political pressure or interference⁴⁰³.

Furthermore, we posed the same questions to a series of officials who worked on the project teams managed by the officials listed above. The result was the same: all endorsed the process as being fully in compliance with the requirements of due process and public service norms.

In the course of our hearings, we found no evidence to contradict the participants' unanimous affirmation of the complete integrity of the process following the announcement of the Best Overall Acceptable Proposal, including the discussions to resolve pre-negotiation issues, negotiations, cabinet approval and signature of the contracts. As at previous stages, the safeguards in the process to ensure that private

395 See *Proceedings*, 21:100; 21:65; 21:67-68; 21:71 and 21:96.

396 See *Proceedings*, 8:40.

397 See *Proceedings*, 19:108.

398 See *Proceedings*, 9:83.

399 See *Proceedings*, 11:30.

400 See *Proceedings*, 9:122.

401 See *Proceedings*, 24:105.

402 See *Proceedings*, 14:12.

403 See *Proceedings*, 13:28.

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interests do not override the public interest as perceived by the democratically elected representatives of the people had been fully operative during this phase of the process.

B) Policy

The negotiation and conclusion of the contract to redevelop Terminals 1 and 2 of Pearson Airport raises two broad policy issues. The first issue reflects the same general question about changes in the Pearson Airport environment that we considered in relation to earlier stages of the process. With respect to the concluding phase, the question becomes: did circumstances change between 7 December 1992, when the discussion and negotiation process was launched, and the date of closing, in a way which would have warranted terminating the process?

The second fundamental policy question is unique to the concluding phase of the process. It addresses the merit of the agreement ultimately reached: was the agreement between the Government of Canada and Pearson Development Corporation set out in the 7 October 1993 documents in the public interest? This question is addressed following the discussion, immediately below, of the circumstances under which the deal was finalized.

Our evidence suggests that there were two potentially significant changes in the Pearson environment after 1992. First, there was discernible progress towards the formation of a local airport authority. This raised anew the question of whether or not redevelopment should be postponed until a recognized authority was in place to manage it. Second, the issuing of the Writs of Election on 8 September 1993 meant that the agreed closing date would fall within the election campaign period. This, in combination with growing controversy over the deal, raised the question of whether the closing of the deal should be deferred.

(i) LAA Developments

The announcement of a Best Overall Acceptable Proposal appears to have provided the disparate local airport authority factions that had existed in the Toronto region during much of 1992 with a powerful incentive to come together. By the end of March 1993, a single organization, a non-profit corporation entitled the Greater Toronto Regional Airport Authority (GTRAA), was actively seeking recognition from the federal government. However, there was substantial disagreement between the Regional Council of Peel, representing Mississauga, and the other Councils over the scope of the proposed airport authority. Disagreement over whether devolution should be of Pearson Airport alone, or Pearson Airport along with Toronto Island, persisted until the agreements were signed, and beyond.

As we have seen, Minister Corbeil and at least some of his officials appear to have disagreed over whether the GTRAA qualified for federal recognition, as of June 1993. It is

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important to recognize that differences of opinion between ministers and officials do arise from time to time, and do not normally imply an effort to subvert the public interest on either side. Issues of public policy are rarely simple, and are typically replete with multiple opportunities for people to disagree, in good faith. As was observed by Mr. Farquhar, the official involved, ministers frequently address issues on the basis of information or perspectives not available to officials⁴⁰⁴.

For the same reasons, a disagreement between a minister and an official does not necessarily indicate error, or bad faith, on the part of the minister. If public officials were always right, there would be no reason to make them accountable to ministers and Parliament. We could simply hand over the challenges of government to the public service, and dispense with the inconvenience of democracy.

It is highly likely that the imprecision of the policy developed for the Minister by his officials contributed to disagreements over the issue of Local Airport Authority recognition, both within the Department and between the Minister and members of the GTRAA. According to officials, the policy did not require unanimous agreement among affected municipalities. It did not, however, spell out criteria for selecting the "principal local governments" in the region served by a particular airport. Furthermore, the policy specified only that a resolution endorsing the structure of a prospective authority need be passed by each of these governments. This left considerable room for dispute about the degree of variation among resolutions that would be consistent with the objectives of the policy.

It could be argued that the GTRAA, as of 15 June 1993, had met the narrowly literal requirements of the policy, as just described. Resolutions of support had been passed by all the councils from which support was required by the federal government. The difference between Mississauga and the other municipalities related to the scope of devolution, not the structure of the organization.

As Minister Corbeil must have found, however, when he visited Mississauga Mayor McCallion and GTRAA officials in early July 1993, the significant differences between these parties over the scope of devolution were also highly personal. Mayor McCallion's aversion to Mr. Bandeen, Chairman of the GTRAA, was amply evident two years after the fact during her appearance before us as a witness.

Furthermore, the 13 May 1993 resolution of the Regional Council of Peel did not merely express a desire for the transfer of both Pearson Airport and Toronto Island. It declared that the Region "strongly opposes the transfer of the Lester B. Pearson International Airport without assuming at the same time the Toronto Island Airport." In other words, Pearson was not to be transferred in advance of Toronto Island. Yet the City of Toronto,

404 See *Proceedings*, 7:53.

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which co-managed the Toronto Island Airport in a tripartite arrangement with Transport Canada and the Toronto Harbour Commission, was already on record as opposing the inclusion of Toronto Island in any transfer of authority to a local airport authority.

While the criteria for granting federal recognition to aspiring local airport authorities did not require complete unanimity among the principle municipalities, the support of Mississauga was clearly essential for obvious practical reasons. As has been seen, the location of Pearson Airport within the boundaries of Mississauga gave Mayor McCallion a great deal of leverage, and in her dealings with the developers of Terminal 3 she had amply displayed her awareness of this and her skill at defending the interests of Mississauga as she saw them. Federal recognition of the GTRAA, given the seriousness of the unresolved policy differences among its participants, would have been irresponsible.

Delaying redevelopment until local airport authority issues could be resolved was an equally unsatisfactory option. The facts as the Minister knew them in the summer and fall of 1993 left little room for doubt about what the probable consequences of a delay in negotiations for this purpose would have been. The issue of the inclusion of Toronto Island Airport was resolved only in 1994, when Mayor McCallion reluctantly abandoned her earlier position, something of which there was no sign in the summer of 1993. At that time, it seemed clear that a delay until the resolution of differences between Mississauga and other GTRAA members would have proved to be equivalent to an indefinite postponement. As Minister Corbeil reminded us, this would have jettisoned the results of nearly three years of work by public officials and successive ministers. Had such a course been taken, it would have been rightly criticized as involving an abominable waste of the resources already expended.

It would also have been inconsistent with the government's view of what was needed, which, as we have seen in earlier sections of this report, was directly grounded in the realities for users of Pearson Airport. A decision to delay would have ignored the need for redevelopment of the terminals which the government had recognized in 1990 and which had not substantially diminished during the years between 1990 and 1993. If anything, the need had grown steadily more acute in Terminal 1. To deny it in 1993 would have been no more responsible than to deny it 1990, and would have added the costs to the public of inconsistency.

In conclusion, we think that it would have been irresponsible to delay redevelopment in 1993, in the hope that the political problems besetting Toronto's local airport initiative would soon be resolved. This would have to substituted wishful thinking for effective action in addressing the problems in Terminals 1 and 2.

(ii) The Election

Mounting controversy over the deal was compounded by the issuing of the Writs of Election during the weeks when the Pearson agreements were being finalized. As has been seen, by early October 1993 the Pearson agreement had evolved from a substantially local controversy, propelled by certain individuals with an immediate stake in the process, to a national election issue. The Leader of the Liberal Party, who opinion polls suggested would in all probability form the next government, had publicly called on Prime Minister Campbell to postpone the closing of the deal, and had announced that a concluded deal would be reviewed if a Liberal government were elected.

As has been seen, officials believed that the deal had been concluded as of late August 1993 and that, while the government could refuse to sign the legal agreements and closing documents, to do so without some form of agreement with the developers would have incurred a substantial legal liability. According to the Minister, only the paperwork remained to be done in October, which did not constitute, in itself, a significant government initiative.

We included in our hearings a panel of academics qualified to identify and discuss the constitutional and political issues faced by the Prime Minister and Minister of Transport in early October. The panel comprised Professor Emeritus J.R. Mallory, University of McGill; Professor John Wilson, University of Waterloo; and Assistant Professor Andrew Heard, Simon Fraser University.

Professor Mallory distinguished between the election campaign period and the caretaker period during the interval between a government defeat in the House or at the polls, and the swearing in of a newly elected government.

During election campaigns, according to Professor Mallory, governments retain the authority and the duty to make those decisions they believe to be necessary⁴⁰⁵. In practice, few significant decisions are made during electoral campaigns, because ministers are normally campaigning. However, important decisions, such as that of the Diefenbaker government to devalue the dollar during the 1962 election, have sometimes been made. Voters have the final verdict on such decisions on election day, and a successor government may choose to review or change them.

During the interval between the defeat of a government and the swearing-in of its successor, in Professor Mallory's view, the situation is different. He advised us that there is

405 See *Proceedings*, 24:5-6.

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a sound body of constitutional precedent that a government that has been defeated at the polls should "refrain from consequential policy decisions and major appointments"⁴⁰⁶.

Professor Heard came to a similar conclusion, based on two distinct lines of argument. One focused on historic precedents and the other on the implications of broader constitutional principles.

With respect to historic precedents which might yield a constitutional convention, Professor Heard argued that there is no evidence of recognition of any rule requiring governments to limit their actions during election periods. Discussions upon which a rule might be based relate only to the period after the election. Professor Heard cited a number of Canadian cases in which there was a clear recognition that during this period a government defeated at the polls, or in the House, has to limit itself to routine matters⁴⁰⁷.

Professor Heard also argued that historic precedents are not the only source of norms, and that constitutional principles alone can also yield rules. He argued that the principle of responsible government centrally involves the entitlement of a cabinet that can command majority support in the House of Commons to provide binding advice to the Governor General. This entitlement implies that "...a cabinet is free to do as it wishes until it is defeated either on a vote of clear confidence in the House of Commons or in a vote in the general election"⁴⁰⁸. According to this argument, the signing of the Pearson agreements during the election period did not violate any constitutional conventions⁴⁰⁹.

Professor Wilson took a different view. Arguing first that conventions about appropriate government behaviour need not be explicitly stated or illustrated in exemplary cases in order to exist, he went on to claim that:

...it is a well-established principle of parliamentary government that once Parliament has been dissolved and an election campaign is underway, the government's freedom of decision-making is firmly restricted and should be confined to dealing with only routine matters of administration, apart, of course, from any emergency situation which may arise⁴¹⁰.

This alleged convention was justified on two grounds. Professor Wilson first argued that once Parliament is dissolved, the executive ceases to be subject to those parliamentary

406 See *Proceedings*, 24:6.

407 See *Proceedings*, 24:18.

408 See *Proceedings*, 24:19-20.

409 See *Proceedings*, 24:21.

410 See *Proceedings*, 24:9.

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constraints that ensure that it is kept responsible. The powers of the executive should therefore undergo a corresponding restriction during this period and adhere to the limits set out in the caretaker convention⁴¹¹.

His second argument was that a government may take a decision in the campaign period but then be defeated in the election. Should this happen, it will never have to take responsibility for that decision. The kind of scrutiny exercised by the media during a campaign is not the equal of that exercised by Parliament, and cannot substitute for it as a constraint upon government. Governments should therefore restrict themselves to routine administrative decisions in this period, except in cases of emergency.

On reflection, we do not find Professor Wilson's arguments persuasive. His claim that a convention may exist without evidence in the form of precedent or earlier affirmation is highly problematical in our view. It makes "convention" a metaphysical notion that could be used by anybody to argue on behalf of anything that they happen to believe should be a rule. Constitutional conventions are, however, more than personal beliefs about what governments should or should not do. They are generally accepted rules of behavior, and cannot be said to exist in the absence of some evidence (of whatever kind) that a rule is generally accepted.

Secondly, we do not agree that the caretaker convention applies whenever Parliament is not in session, immediately available to call governments to account. If this were the convention, then governments would be limited in their capacity to act during summer and winter recesses as much, and for the same reasons, as during an election. By this unconvincing standard, the newly-elected Liberal government violated the constitution by deciding to cancel the Pearson agreements when Parliament was not in session (Parliament did not sit until 17 January 1994, six weeks after the cancellation announcement). Yet no one has suggested this.

Third, we do not agree with the argument that a government may act and then be defeated, and thus never be held responsible. On the contrary, as Professor Heard reminded us, an election is the penultimate moment of responsibility in our parliamentary system⁴¹². At this time the government is held accountable directly by the people rather than by the peoples' representatives in Parliament. The consequences a government suffers if its performance is held to be unsatisfactory are far more immediate than are ever achieved by Parliament. An election period is not, therefore, an interruption of the constraints of responsibility which calls for restricted government decision-making.

411 See *Proceedings*, 24:9.

412 See *Proceedings*, 24:30-31.

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Even if Professor Wilson's main arguments were valid, however, this would not prove that a convention exists. It would only provide a persuasive reason for people to adopt one. Indeed, the fact that the two other academics on our panel did not agree with Professor Wilson's view confirms that a convention has not yet emerged. If it had, there would not be significant controversy about its existence.

Finally, it is noteworthy that the views of Professors Mallory and Heard broadly support those of the senior public servants with whom we discussed this issue. Mrs. Bourgon's comments on the need for caution do not, as was claimed by Professor Wilson, support the existence of a "caretaker" convention⁴¹³. Rather, they imply that public servants should take special precautions during the election period to ensure that their actions reflect the perceptions of elected politicians. As has been seen, the Minister of Transport did not regard the closing of the deal agreed upon and publicly announced in August as a new initiative; thus he had no doubts about the appropriateness of proceeding to sign the agreements.

We therefore agree with Professors Mallory and Heard on this issue. No constitutional convention restricts government decision-making during the period between the issue of the Writs of Election and the vote. The Prime Minister and Minister of Transport committed no constitutional infraction in the fall of 1993 when they played their respective roles in closing the Pearson Airport deal. On the contrary, they were merely performing their duty to continue to govern until the will of the people had been expressed on election day.

(iii) The Final Arrangement

Was the project put in place by the Pearson agreements in the public interest? This question remains to be considered once it has been established that nothing that happened between December 1992 and October 1993 would have justified, or required, stopping the process.

A preliminary finding from our hearings is that there is no simple logic that directly answers this question. The Pearson agreements set out the details of an extremely complicated arrangement, negotiated through a complex series of trade-offs and balances. It would almost certainly be misleading to consider any single aspect of the deal in isolation, against a standard that did not reflect the relationship of that aspect to the overall package.

For example, the Crown had to balance the objective of obtaining an attractive financial return to the Crown against the objective of allowing a sufficient return to the developers to enable them to fulfil their development commitments. Too large a rate of

413 See *Proceedings*, 24:13-14.

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return for the Crown would have made the project unworkable, and could have resulted in the terminals returning to government hands after the bankruptcy or withdrawal of the developers.

Also, both the Crown and the developers had to structure their arrangements so as to avoid unmanageable burdens on the airlines and other tenants. Excessive burdens would have either driven tenants to other airports, or out of business, ultimately reducing the revenue stream to both the Crown and developers. If a tenant had passed heightened costs on to the travelling public, such charges might have made Pearson uncompetitive with other airports and thus reduced revenue flows to the Crown and developers as a result of the long-term erosion of business⁴¹⁴.

A) Good or bad?

The Pearson agreements met the key objective that had triggered the 1990 initiative. They would have resulted in the immediate redevelopment of the terminals so as to restore and maintain their functionality, at no cost to the Canadian taxpayer. They would also have ensured the longer-term expansion of terminal capacity as required, again at no cost to the Canadian taxpayer. The result, which even critics of the agreements do not attempt to deny, would have been to replace a crumbling Terminal 1 and a Terminal 2 with limited trans-border capacity with a truly world-class airport facility. There would also have been important indirect benefits to the public, including significant local job creation along with the long-term employment and tax revenue increases associated with the creation of airport development expertise which could be marketed elsewhere in Canada and in other countries. All of these benefits would have been gained at no cost to the Canadian taxpayer.

The fact that the travelling public would have been provided with a world-class airport facility, at no cost to the tax-payer and indeed at some profit to the Crown, is the central benefit of the deal. This project would have involved an investment, by the developers, of some \$700 million over the life of the agreements. It may be an oversimplification to describe this as a direct benefit to taxpayers, since the immediate beneficiaries would have been the airlines and other tenants. It remains true, however, that had the government retained the terminals and undertaken development to be funded by the Crown in the conventional way, taxpayers would have paid. They might have paid less than \$700 million and received less in return; but they would have paid.

Earlier chapters of this report have established the continuing need for development, the government's inability to finance it, and the unavailability for practical purposes of the Local Airport Authority alternative. Given these circumstances, it is hard to see how a deal providing \$700 million of private sector investment to accomplish redevelopment objectives

414 See *Proceedings*, 12:18.

that would otherwise have had to be met with public spending could have failed to be good for Canadians. The real issue thus becomes: was it good enough?

B) Was It Good Enough?

If it is accepted that the agreement would have been a good thing for Canada, it can still be argued that a better agreement could have been obtained. However, the fact that this can always be done, irrespective of how good an actual deal happens to be, introduces an important cautionary note. A responsible critique of the deal should include a realistic discussion of standards of comparison, rather than simply relying on the fact that it is always possible to demand more.

We discussed the issue of comparative standards with several of our witnesses, particularly Mr. Paul Stehelin, the Deloitte & Touche consultant whose assessment of rates of return and other financial elements provided important guidance to government negotiators as the final agreements were being shaped. According to Mr. Stehelin, to identify projects truly comparable to the Pearson redevelopment initiative presented a major challenge.

The British Airports Authority, which is a publicly traded company listed on the London stock exchange, was mentioned as being perhaps the only readily comparable enterprise. To indicate the complexity of this judgment, however, Mr. Stehelin referred to the assessment conducted by the British monopolies and mergers commission of monopoly and non-monopoly revenue streams in the British Airport Authority case. The existence of a significant non-monopoly revenue stream is an important difference between enterprises such as the British Airport Authority and the Pearson redevelopment project, on the one hand, and pure utilities on the other. Utilities, like other monopolies, can pass increased costs through to the consumer. They thus face lower levels of risk and require correspondingly lower levels of return: 11.5 to 12.3 per cent under the business conditions prevailing in Canada as of 1993 was mentioned. Higher returns are required, however, to warrant business activities involving the higher levels of risk faced by airport infrastructural investment. Mr. Stehelin's assessment of the levels of risk involved in the Pearson terminals development project led him to the conclusion that it was comparable to the British Airports Authority, rather than a pure utility. In his words: "...anybody who believes that an airport is a pure monopoly doesn't understand airports. They are influenced by market fluctuations"⁴¹⁵.

With respect to rates of return on investment, we were told that as of 1993 the British Airports Authority would not consider a new terminal construction or any other project that

415 See *Proceedings*, 13:18.

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did not yield an 18 per cent return, after taxes⁴¹⁶. This contributed to the conclusion, set out in Mr. Stehelin's August 1993 report, that a rate of return in the range of 12 to 16 per cent was reasonable. Pearson Development Corporation's rate of return was negotiated down, over the course of 1993, from approximately 18 per cent to an estimated 14 per cent in the final deal⁴¹⁷.

The rate of return to the Crown also declined during the course of negotiations, to reflect such requirements as the protection of the airlines from significant short-term cost increases. According to Mr. Rowat, who negotiated this element, the bottom line was to ensure that rents to the government did not fall below the level available from the next best alternative⁴¹⁸. Mr. Desmarais described the eventual result as falling mid-way between the original Paxport offer of some \$1.2 billion and the Claridge offer of \$642 million. The estimated return to the Crown achieved in the final agreement was \$843 million, which moderately exceeded Transport Canada's \$815 million "base case" estimate of the net present value to the Crown of the terminals⁴¹⁹.

The Deloitte & Touche report of 17 August 1993 validated the judgment of negotiators, concluding that a net present value of the ground lease of between \$800 million and \$900 million represented a "fair market value consideration to the Crown"⁴²⁰. The fact that a reasonable rate of return to the Crown was achieved using the business standard employed by Mr. Stehelin is especially noteworthy when it is remembered that this was not simply a business deal. Non-monetary objectives were also being met, as reflected in Mr. Broadbent's observation that: "I'm not so sure the Crown should be making a lot of money out of Pearson. I think they should be running a good airport"⁴²¹.

A further negotiating objective had been to avoid imposing unmanageable charges on airlines and (indirectly) passengers, which would have made the airport uncompetitive⁴²². Ultimately, Air Canada had the final say about this aspect of the deal. As has been seen, during the summer of 1993, the Airline and the developer agreed on an arrangement that lowered costs to the airline as a result of an agreement, on the part of the Crown, to defer ground rents over a three-year period and agreement on the part of the developers to lower the capitalization rate and provide 10 per cent of their net concession revenues to the airlines.

416 See *Proceedings*, 13:16.

417 See *Proceedings*, 12:9.

418 See *Proceedings*, 10:88.

419 See *Proceedings*, 12:30.

420 *Report*, p. 6.

421 See *Proceedings*, 10:28.

422 See *Proceedings*, 10:88.

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On this aspect, the decisive judgement is surely not that of an outside party. Air Canada was happy, or the deal would not have been accepted. In the words of Mr. Fiore, a key Air Canada participant:

In the final analysis, after a great deal of difficult negotiations, Air Canada supported the proposal. It was the next best alternative to Air Canada actually being an equity partner, and it allowed us to make very necessary improvements at a fair cost⁴²³.

Looking back on the agreement from the perspective of 1995, Air Canada officials commended its timing, as well as the financial terms which had been negotiated. According to Air Canada's current Corporate Real Estate Director, Mr. David Robinson:

The ideal time frame to have commenced the redevelopment of Terminal 2 was in 1993 while passenger numbers were down. ...the disruption to the travelling public would have been substantially less compared with the impact it will have today and in the future⁴²⁴.

Assessing the agreement in global terms during his appearance as a witness, Minister Corbeil referred with evident pride to the concluding of the project, when:

...a final agreement wholly consistent with the interests of Canadian taxpayers and the travelling public, and intended to generate significant and beneficial economic impact(s) for the City of Toronto and the Toronto area, for the province of Ontario and for Canada as a whole was finally reached⁴²⁵.

Public service officials refrained from broad judgments on the public policy merits of the agreement. However, they did comment on the extent to which the agreement met the original objectives of the government as set out in the Request For Proposals. As has been seen, these were essentially that needed development should take place, that the government should be no worse off financially than had it continued to operate the terminals; that the airport remain competitive with other airports in terms of costs; and that new charges to airlines (and ultimately passengers) should not be onerous. **Mr. William Rowat, whose role in completing negotiations lends special authority to his comments, stated: "I think those guiding principles were met in the final agreement"⁴²⁶.**

423 See *Proceedings*, 12:78.

424 See *Proceedings*, 12:78.

425 See *Proceedings*, 21:10.

426 See *Proceedings*, 11:24.

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Mr. Rowat's predecessor, Mr. Broadbent, availed himself of the greater freedom allowed a retired public servant involved with the project in a consulting capacity:

I would not have been a party to this whole business without being able to look myself then and now in the mirror when shaving in the morning and know that what was done was right and that it was a good deal for Canada⁴²⁷.

We fully concur with these assessments. Our evidence leaves no doubt that the negotiators of the Pearson development agreements faced an enormously difficult task, given the complexity of the deal and the other circumstances detailed above. They did a superb job of ensuring that the original objectives of the government were met, and of obtaining what could have been lasting value for Canadian taxpayers .

As parliamentarians reviewing the arrangement from the perspective of global public interest, we recognize the credibility of the advice given to the government, the absence of any findings during our hearings that provide a valid basis for a contrary opinion, and that parliamentarians are not technical specialists qualified to re-negotiate after the fact on their own.

Mr. Spencer, Senior Vice-President of Finance for Claridge Properties and a director of Pearson Development Corporation, faced the government officials across the table during the negotiating process. He provided a blunt verdict: "they were slow, but they were also very tough. Very very tough"⁴²⁸.

We would add that they were very effective. They achieved an agreement that would have provided passengers using the airport and the people of Canada with an enduring example of the contribution public sector-private sector partnerships can make to the public interest.

427 See *Proceedings*, 9:83.

428 See *Proceedings*, 17:79.

“I didn’t take notes...”

Robert Nixon

Following the Liberal election victory of 25 October 1993, Prime Minister designate Jean Chrétien moved quickly in an attempt to meet his campaign commitment to review the Pearson Airport agreements and the process that had produced them. On 27 October a telephone call was placed to Mr. Robert Nixon, well known for his contribution to public life in Ontario in a range of capacities. He had served as the Leader of the Ontario Liberal Party between 1967 and 1975 and in various cabinet positions, including Treasurer of Ontario in the Peterson government until its defeat in 1990⁴²⁹.

What was requested of Mr. Nixon was essentially to review the deal and provide a personal opinion to the Prime Minister within a month. Mr. Nixon believed that his selection was based on the Prime Minister's confidence in his judgment and while initially concerned that he was not a lawyer, felt honoured to be asked to take on what he saw as an important role in the initial stages of the new government⁴³⁰.

Mr. Nixon repeatedly stressed that he was asked to provide a personal judgment, and that he did not exercise, or seek, public inquiry powers which would have enabled him to take evidence under oath, compel the appearance of witnesses, or hold public hearings⁴³¹.

Moreover, he did not, receive a written mandate precisely specifying his terms of reference. After agreeing to review the deal, Mr. Nixon engaged Mr. Stephen Goudge, a partner in the law firm of Gowling, Strathy and Henderson; and Mr. Allan Crosbie, Managing Partner of the specialty merchant bank Crosbie & Company Inc. In addition to independent legal and financial advice from these team members, Mr. Nixon received administrative support from Mr. Brad Wilson, previously a member of his ministerial staff⁴³².

In a preliminary planning session with Messrs. Goudge and Wilson on 29 October 1993, Mr. Nixon stressed that the one-month time limit would not be extended, and the team arrived at a schedule that allowed approximately three weeks for interviews and review of information, with the fourth week kept clear for writing a report. It was recognized that the

429 See *Proceedings*, 5:17.

430 See *Proceedings*, 25:21-22.

431 See *Proceedings*, 25:25.

432 See *Proceedings*, 25:17.

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one month time-frame meant that meetings with individuals and organizations "had to be somewhat restricted in number"⁴³³.

Mr. Nixon's meetings appear to have been set up largely in response to requests for them from interested parties who were well aware of his appointment and its purpose⁴³⁴. While we were also advised that such requests were balanced with Mr. Nixon's own requirements for information, neither the Nixon report nor Mr. Nixon's statements to the Committee make clear the criteria for selection of those interviewed.

Of those who met with Mr. Nixon, eighteen also provided evidence during our hearings. Mr. Nixon's descriptions of the information they provided to him (subject in certain cases to confidentiality agreements) could thus be compared with that they provided to us directly. These witnesses affirmed in open hearings and under oath that the information they provided to Mr. Nixon did not conflict with the evidence they provided to our Committee.

By his own admission Mr. Nixon's meetings and other contacts were not lengthy, even in the case of key individuals who could have provided extensive technical information. They were also informal and in many cases no notes were taken⁴³⁵. For example, the contact with Mr. Farquhar consisted of a fifteen-minute telephone call limited largely to a discussion of basic information, along with options for the inclusion of provincial and federal nominees on Local Airport Authority boards⁴³⁶. As Director General, Airport Transfer, Mr. Farquhar could have provided (as he did during our hearings) detailed comments on Local Airport Authority policy and attempts by the Greater Toronto Airport Authority to gain recognition. Similarly, Mayor McCallion met with Mr. Nixon for only about half an hour, and Air Canada officials met with him for only an hour, as did Mr. Coughlin⁴³⁷.

As the information-gathering and analysis phase proceeded, Mr. Nixon developed headings on prominent concerns, and drafted items such as the letter of transmittal that would eventually accompany the report⁴³⁸. In fact, some two weeks before the final report was issued, well before his meetings with selected participants were completed and before Mr. Crosbie's financial review had been provided to him, Mr. Nixon had prepared detailed preliminary drafts of his report which included substantially the same conclusions as were

433 See *Proceedings*, 25:5.

434 See *Proceedings*, 25:6.

435 See *Proceedings*, 25:57.

436 See *Proceedings*, 25:49.

437 See *Proceedings*, 17:14-15 and 12:30.

438 See *Proceedings*, 25:10.

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submitted to the Prime Minister. The Nixon review was not merely a rush to judgement: it could more appropriately be termed a rush to pre-judgement.

Mr. Nixon told us that while he came to have concerns about various aspects of the substance of the agreement, the most significant concern was the signing of the agreements in the midst of an election campaign, and in the face of mounting controversy: "In my view, such an event flew in the face of normal and honorable democratic practice"⁴³⁹.

Mr. Nixon further advised us that, on the basis of the information he had gathered, including legal advice from Mr. Goudge and financial advice from Mr. Crosbie, along with his own experience, he had concluded that his advice to the Prime Minister must be to favour cancellation of the agreements⁴⁴⁰. On 24 November 1993, Mr. Nixon presented his findings and conclusions to the Prime Minister's policy advisor, Mr. Eddie Goldenberg. These, we were told were read without comment, and arrangements were agreed upon for their submission.

The submission of the report, incorporating conclusions and the recommendation, took place at a meeting on 29 November 1993 between Mr. Nixon accompanied by Mr. Wilson, and the Right Honourable Jean Chrétien, Mr. Goldenberg, and the Hon. Douglas Young, Minister of Transport. Mr. Nixon was subsequently advised that his report and the decision to cancel would be made public at a press conference scheduled for 3 December 1993⁴⁴¹.

On 3 December 1993, Prime Minister Chrétien announced that the Pearson agreements would be cancelled, and that related discussions with Pearson Development Corporation would begin immediately. The advice in the Nixon report was presented as the central basis for this decision, and the conclusion and recommendation in the report were quoted in the press release accompanying the announcement:

My review has left me with but one conclusion. To leave in place an inadequate contract, arrived at with such a flawed process and under the shadow of possible political manipulation, is unacceptable. I recommend to you that the contract be cancelled.

439 See *Proceedings*, 25:10.

440 See *Proceedings*, 25:14.

441 See *Proceedings*, 25:14.

1. Observations

The decision to cancel the Pearson contracts was announced mere days after Mr. Nixon's submission of his recommendation. His full report was both distributed with the press release announcing cancellation and quoted within it. No other basis for cancellation was given.

The assessment of the cancellation decision therefore rests heavily on an evaluation of the specific findings set out in the Nixon report, and of the facts and analysis on which these findings were based. Our evaluation draws both on the report and the evidence provided to us by Messrs. Nixon, Goudge and Crosbie during hearings the 26, 27, and 28 of September and 6 November 1995. It draws as well on the evidence obtained in the course of our own hearings of sixty-two other individuals on this matter, during July, August, September and portions of October 1995.

A) Process

We have subjected Mr. Nixon's line of reasoning to the same standards as we applied in examining stages in the development of the Pearson agreements themselves. These standards require, in essence, participants' affirmation under oath that their work was not compromised by political pressure, that they were not manipulated by lobbyists or other outsiders, and that their activities did not take place under time pressures or other circumstances that prevented them from performing their duties to an adequate professional standard.

Mr. Nixon has assured us that the findings of his report are exclusively his own, and that his inquiry was not subject to political pressure or interference. He has, furthermore, indicated his confidence that his recommendation to the Prime Minister was "proper and appropriate"⁴⁴².

As we have seen, Mr. Nixon acknowledges that the one-month time-frame precluded meetings with everyone with whom he would have liked to have met. We take his confidence in the results of his review to indicate that it was not, in his judgment, undermined by its time-frame or other circumstances.

We have no doubts about the sincerity of Mr. Nixon's dedication to the public interest as he saw it. Our own inquiry, however, resulted in concerns about the judgment underlying Mr. Nixon's confidence in his process and its results.

442 See *Proceedings*, 25:15.

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Earlier chapters of our report demonstrate that the Pearson process, and the decisions reflected in the final agreements, were enormously complicated. Having spent over three months holding intensive hearings on this matter, we are unable to understand how a fact-finding and analysis phase lasting only three weeks could possibly have been adequate for Mr. Nixon's task, or appeared adequate to Mr. Nixon. Concerns about the adequacy of the time-frame are certainly not dispelled by the financial analysis report provided to Mr. Nixon by Mr. Crosbie, which refers to "the very tight time-frames in which we were working" and states that Mr. Crosbie's review " ... by necessity, was limited in nature" (Crosbie Report, p.1).

This concern can only deepen when we consider the number of people with whom Mr. Nixon did not meet.

Mr. Nixon **did not meet** or communicate with Mr. Victor Barbeau, who as Assistant Deputy Minister, Airports at Transport Canada had major responsibilities for the policy framework governing the Pearson process, for the preparation and release of the Request For Proposals, and for the evaluation process⁴⁴³.

Mr. Nixon **did not meet** or communicate with Mr. Gerald Berigan, the Transport Canada Director General in charge of establishing the evaluation team and the process that reviewed development proposals in 1992⁴⁴⁴.

Mr. Nixon **did not meet** or communicate with Mr. Ron Lane, who put together the evaluation team and led the evaluation process⁴⁴⁵.

Mr. Nixon **did not meet** or communicate with Messrs. Cappe or Gershberg, or any Treasury Board Secretariat official who could have explained the role of the Secretariat in the process⁴⁴⁶.

Mr. Nixon **did not meet** or communicate with Mr. Robert L'Abbé of the firm Raymond, Chabot, Martin, Paré, who could have explained the findings obtained in the course of monitoring and auditing the evaluation process⁴⁴⁷.

443 See *Proceedings*, 25:33.

444 See *Proceedings*, 25:35.

445 See *Proceedings*, 25:36.

446 See *Proceedings*, 25:41.

447 See *Proceedings*, 25:41.

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Mr. Nixon **did not meet** or communicate with Mr. Simke, of Price Waterhouse, who could have outlined advice given on such matters as the length of the preparation period for the proposal⁴⁴⁸.

Mr. Nixon **did not meet** with Mr. Raymond Hession of Paxport, who could have provided a detailed account of Paxport's proposal and the environment to which it responded, as well as Paxport's use of lobbyists⁴⁴⁹.

Mr. Nixon **did not meet** with any of the lobbyists about whose role his report comes to definite conclusions.⁴⁵⁰

Mr. Nixon **did not meet** with Mr. Shortliffe, either in the latter's capacity as Deputy Minister of Transport during the period when much of the policy framework governing decisions about the terminal was developed, or in his capacity as Clerk of the Privy Council during the negotiation and finalization of the agreements⁴⁵¹.

Mr. Nixon **did not meet** or communicate with either the Hon. Douglas Lewis or the Hon. Jean Corbeil, who could have explained why they decided to seek private sector involvement in redeveloping the terminals and provided the rationale for the various individual decisions about how to do this⁴⁵². Mr. Nixon thus chose to rely on his own impressions about the policies of the Progressive Conservative Government and their rationales, rather than information which ministers in that government could have provided.

The complete list of people who have provided us with useful information and advice, but with whom Mr. Nixon did not meet, is considerably longer. It includes academics qualified to provide advice on the issue that Mr. Nixon identified as his most significant concern, the propriety of concluding the agreements during the election campaign period⁴⁵³.

The one-month time-frame within which Mr. Nixon worked seems to us to have done more than merely limit the number of people he saw. Mr. Nixon's explanations for the omission of certain individuals from his list left us with a strong impression that he had an uncertain grasp of the nature of the Pearson process, and the respective roles of various individuals.

448 See *Proceedings*, 25:43.

449 See *Proceedings*, 25:44.

450 See *Proceedings*, 25: 44.

451 See *Proceedings*, 25:45-46.

452 See *Proceedings*, 25:38.

453 See *Proceedings*, 25:44-45.

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For example, Mr. Nixon told us that he was unaware of the identity or role of Mr. Ron Lane, who led the evaluation process. His justification of the failure to meet with or contact Mr. Lane was that it was unnecessary because of the availability of an independent evaluation from Mr. Crosbie. The departmental evaluation process, however, was a comprehensive evaluation of the proposals, including development plan, personnel transfer, industrial benefits and other considerations. It was not merely a financial analysis, for which the Crosbie report could properly be substituted.

Similarly, Mr. Nixon indicated that had he not met Mr. Robert L'Abbé, in view of the availability of the Crosbie evaluation of the value of the contracts. The role of Raymond, Chabot, Martin, Paré, however, was not to evaluate the contracts. Mr. L'Abbé and his team monitored the Department's formal evaluation process, and validated its integrity through a post-project audit.

These errors and omissions raise a fundamental question: if Mr. Nixon did not understand such basic elements of the Pearson process as the proposal evaluation and the evaluation audit, how could he have identified the people he should meet and what they should be asked during what they described to us as the relatively brief and casual meetings which occurred? Our discussions with Mr. Nixon and Messrs. Goudge and Crosbie during September and November provided no reassurance on this issue.

Our concerns about the impact of the one month time-frame go further still. It would have been extremely difficult for the Nixon team to avoid receiving a distorted view of the process, in view of the particular individuals seen, because Mr. Nixon and his advisors did not have information from other sources which would have provided some needed perspective.

Mr. Nixon found time for at least five meetings with various individuals attempting to form a Toronto local airport authority, including officials of the Ontario government which had, at one juncture, promoted one of the would-be authorities. In total, we estimate that he met with 12 individuals from the municipal, regional or provincial level of government for the purposes of his review. He told us that these meetings left him with the impression that both the contracting process and the contracts had inadequacies, that Minister Corbeil had refused to engage in discussions which could have led to recognition of the authority, and that public servants had been disgruntled⁴⁵⁴. Mr. Nixon appears, however, to have made no attempt to verify or balance these views by talking to the Minister, or by exploring in detail the issues involved in local airport authority recognition.

Mr. Nixon also met with the Liberal Party caucus from Metropolitan Toronto, including both Senators and Members of the House of Commons. We were advised that the

454 See *Proceedings*, 25:8-9.

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Terminals 1 and 2 redevelopment agreements were the only agenda item at this meeting. We note, as well, that a number of those who attended this meeting expressed fervent opposition to the agreements in statements which appeared in the media during the time of the Nixon review. Mr. Nixon's interest in the views of political parties did not, however, extend beyond the boundaries of his own.

While failing to communicate with numerous senior public officials who had significant responsibilities for various aspects of the deal, Mr. Nixon did find ample time to meet with Mr. Chern Heed, who was Manager of Pearson Airport during the 1990 to 1993 period. Mr. Heed appears to be the only federal public servant who was openly dissatisfied with the Pearson redevelopment project, although Mr. Nixon's description of his views does not include any concrete allegations of impropriety or misguided decision-making which could be tested against other evidence.⁴⁵⁵

While logistical problems prevented us from examining Mr. Heed, we think Mr. Nixon's statement that Mr. Heed was "uncomfortable" with what he perceived to be pressures and the direction of negotiations should be balanced against the fact that, as manager of the Airport, he would have been particularly vulnerable to the feelings of personal proprietorship which Minister Lewis suggested may have led some officials to drag their feet on relinquishing departmental management responsibilities. Any discomfort Mr. Heed may have felt did not, however, prevent him from joining with the rest of the team to sign the evaluation report which unanimously recommended that Paxport be selected as the Best Overall Acceptable Proposal. In perspective, discomfort on the part of an official is far from an adequate basis on which to reject a project as far-reaching as the Pearson redevelopment project.

Mr. Nixon appears to have attached substantial importance to the views expressed in his repeated meetings with municipal, regional and provincial advocates of a local airport authority. Furthermore, as if to throw into high relief the prominence given in his review to anyone with accusations to make, he went so far as to include on the agenda of his review a meeting with the caucus of the political party which had just spent an election campaign fostering public suspicion about the project.

2. Nixon Findings

For a document of only some fourteen pages in length, the Nixon report contains an imposing number of errors of fact, deficiencies of argument and questionable judgments. For the purposes of this report, we are confining our attention to findings which Mr. Nixon advised us were of direct importance to his conclusions, and which we discuss under three priority headings which Mr. Nixon employed in describing their relative importance.

455 See *Proceedings*, 25:8-9.

A) Matters of Tertiary Importance

Given the emphasis which allegations of political manipulation and excessive lobbying received at the time of the announcement that the Pearson contracts would be cancelled, it came as something of a surprise to us that these two issues were specifically selected by Mr. Nixon for relegation to his category of least important, or tertiary, matters. Indeed, they were the only issues clearly placed within this category.

(i) Patronage

Mr. Nixon's report contains the assertion, repeated during our hearings, that Mr. Donald Matthews of Paxport had been Chairman of the Right Honourable Brian Mulroney's 1983 leadership campaign as well as President of the Progressive Conservative Party of Canada, and chief fundraiser for that party. As well, Mr. Nixon claims that the Hon. Otto Jelinek, a cabinet minister in both Mulroney governments, was employed by Paxport interests after he decided not to seek re-election in 1993. Mr. Nixon claims that these circumstances led him to suspect that patronage may have played a role in the selection of the Paxport proposal as Best Overall Acceptable Proposal in 1992.

The careful ambiguity with which this opinion is expressed suggests to us that it should not be described merely as an opinion, but recognized for what it is, an innuendo. The exact words of the Nixon report, repeated almost word for word during our hearings, are: "This (Progressive Conservative party affiliations), together with the flawed process I have described, understandably may leave one with the suspicion that patronage had a role in the selection of Paxport Inc".⁴⁵⁶

There are several inaccuracies or significant omissions in Mr. Nixon's account of the facts, which he admitted to our astonishment had no basis other than statements in the popular press⁴⁵⁷. Mr. Don Matthews was indeed President of the Progressive Conservative Party of Canada, but this was over twenty years ago. He was not chairman of any Mulroney party leadership campaign nor was he ever chief fundraiser for the Progressive Conservative Party. As well, according to sworn testimony, Mr. Jelinek was never a director of any Paxport-affiliated company, and never provided advice relating to Pearson Airport⁴⁵⁸.

Mr. Matthews clearly has a longstanding affiliation with the Progressive Conservative Party of Canada. The fundamental issue is whether preferential treatment was given to the Paxport proposal because of this. The Nixon report does not actually make this

456 *Report*, p. 9; 25:13.

457 *See Proceedings*, 30:32.

458 *See Proceedings*, 18:41.

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very serious allegation, but clearly implies it. Without preferential treatment, there would be no way for Mr. Nixon to conclude that patronage had somehow had a role in the selection of the Paxport proposal.

Mr. Nixon brings no evidence to support the insinuation of preferential treatment; it is sheer conjecture on Mr. Nixon's part. In our lengthy discussions with Mr. Nixon and his colleagues no concrete support for their views emerged, either before or during the process of seeking and selecting a best overall acceptable proposal.

Mr. Nixon attempted to support his views by referring, first, to an apparent assertion by someone affiliated with the Morrison Hershfield Group that, as of March 1992 when the Request For Proposals was released, "the fix was in." The importance attached by the Nixon team to the views of Morrison Hershfield was affirmed by Mr. Goudge, who declared that: "...as a substantiation for the conclusion that this transaction was concluded under the shadow of possible political manipulation, I considered the views of Morrison Hershfield to be a substantiation of that conclusion"⁴⁵⁹.

However, he was unable to provide any notes confirming either his meeting with or the comments made by Morrison Hershfield.

As has been seen in Chapter IV, however, the Morrison Hershfield Group had provided the Nixon team with a clear explanation of its failure to complete the proposal submission step which had nothing to do with patronage. Morrison Hershfield recognized that the Government had adopted an alternative redevelopment concept to the one upon which its proposal was based, and that its proposal did not meet the requirements set out in the Request For Proposals. The "fix" that was "in" was the Government's selection of a concept involving the divestiture of the terminals, establishing a role for the developer which Morrison Hershfield did not want to take on⁴⁶⁰.

Under questioning, Mr. Nixon acknowledged that he, too, recognized that the Morrison Hershfield proposal had not met Request For Proposals requirements⁴⁶¹. Although he claimed that Morrison Hershfield did not attempt to adapt its proposal because they felt the playing field was not even, Mr. Nixon acknowledged that the written presentation provided to him by the firm contained no suggestion of this, and was unable to provide any other evidence in support of his assertion.

459 See *Proceedings*, 25:93

460 See *Proceedings*, 30:62.

461 See *Proceedings*, 30:62.

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Otherwise, Mr. Nixon supported the contention that preferential treatment had occurred by referring to vague expressions of dissatisfaction by Ontario government officials who had attempted to promote the formation of a local airport authority. Again, however, there was a complete absence of concrete evidence.

The Nixon team evidently made no effort to ascertain any facts to support the vague suspicions of preferential treatment expressed by several people during the review period. Aspersions cast at the Pearson agreements were simply accepted. We were told that, because the Nixon inquiry was not a judicial proceeding, statements were not dismissed on the grounds that they were hearsay evidence but were rather accepted, as "information"⁴⁶². As Mr. Nixon's findings demonstrate, however, this "information" was not then subjected to investigation. It was transformed instantaneously into factual opinion.

The sheer thoughtlessness of the Nixon report is apparent, equally, in the fact that no clear standard was applied to the facts as they were understood. Apparently, Mr. Matthews' affiliation with the Progressive Conservative Party was viewed to be sufficient on its own, to permit the Nixon team to see all perceived shortcomings in the process leading up to the selection of the Paxport proposal as evidence of patronage. Yet, to apply this standard would render the decision to cancel the Pearson agreements equally questionable as Mr Nixon has had a longstanding affiliation with the Ontario Liberal Party including a term as leader.

Our discussions, held under oath, with the officials and cabinet ministers who played significant roles in the selection of the Paxport proposal have yielded not a single shred of evidence that this proposal was given preferential treatment, either because of Mr. Matthews' political affiliations or for any other reason. On the contrary, the key decision-makers have consistently affirmed the integrity of the process. Furthermore, this is confirmed by the fact that the government did not award immediately the contract to Paxport, following the selection of its proposal as the best overall acceptable proposal.

Our conclusion is that the insinuation of preferential treatment contained in the Nixon report is not merely groundless; it is disgraceful.

(ii) The Role of Lobbyists

Mr. Nixon's conclusion about the role of lobbyists was that: "It is clear that the lobbyists played a prominent part in attempting to affect the decisions that were reached, going far beyond the acceptable concept of 'consulting'. "Reference is made, in particular, to concerns expressed by senior officials involved in the negotiations that their actions and

462 See *Proceedings*, 25:89.

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decisions were being heavily affected by lobbyists, an unusual level of interest by political staff, and a "climate of pressure" which resulted in the re-assignment of several officials⁴⁶³.

Following the pattern seen elsewhere in our hearings, the Nixon team provided no concrete evidence to support any of these findings. As well, the absence of any clarification of the phrase "the acceptable concept of 'consulting'" leaves the basis for Mr. Nixon's conclusions about lobbying veiled in utter mystery. Similarly, our discussions shed no light on Mr. Nixon's references to permissible norms that might be applied to lobbyists' attempts to influence public officials.

Federal legislation suggests some standards. The *Lobbyists Registration Act* recognizes lobbying as a legitimate part of the democratic process, and requires anyone who undertakes to "communicate with a public office holder in an attempt to influence" types of government decisions to provide prescribed information to the Lobbyists Registration Branch at Industry Canada. The norm expressed in this legislation is that attempting to influence public office holders is acceptable, provided that the prescribed information is made public. Types of influence that are not acceptable, such as bribery and corruption, are set out in the *Criminal Code*.

Mr. Nixon gives no indication as to whether his standard of "acceptable concept of consulting" reflects the norms endorsed by Parliament. His comments on lobbying do not suggest awareness of any infractions of the *Criminal Code* or federal lobbying registration legislation, which would have obliged him to report his information to the Royal Canadian Mounted Police, rather than employ it as a basis for vague aspersions. More broadly, Mr. Nixon provides no specific examples of the nature of his standards or of the behaviour he regards as objectionable.

We closely examined public sector officials as to the degree of influence exercised by lobbyists, and consistently found their perceptions, expressed under oath, to border on the dismissive. Nor have the lobbyists, or their employers, been able to demonstrate clearly that their efforts achieved tangible influence upon decisions. Indeed, their accounts of the activities carried out in relation to Terminals 1 and 2 place substantially greater emphasis on their role in obtaining and providing to clients timely information about government processes and the initiatives of competitors, along with strategic advice and communications services, than on the role of making representations to public officials. In the course of our inquiry, we have found absolutely no evidence that the efforts of lobbyists led any official to do anything contrary to the public interest.

There is, however, ample evidence that lobbyists were active on the Pearson Airport files. We have noted the monthly fees of several major lobbyists in Chapter III. Testimony

463 See *Proceedings*, 25:13.

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we received, in combination with information provided to other parliamentary committees, indicates that Paxport spent \$334,268 between 1 February 1990, when lobbyists were engaged to work on the Terminals 1 and 2 file, and February 1994. Claridge spent a similar amount between the release date of the Request For Proposals and 13 January 1993 (the date of the formation of the joint venture). If its overall spending followed the same pattern as Paxport's, it may have exceeded \$700,000.

The amounts spent by the principal developers on lobbying related to Terminals 1 and 2 total about \$1 million, over a period of approximately four years: substantially less than the "millions of dollars" asserted by the current Minister of Transportation during his July 1994 appearance before the Senate Standing Committee on Legal and Constitutional Affairs⁴⁶⁴. Given that an \$750 million deal was involved, and recognizing that its complexity would affect needs for government relations services, we do not think that global spending of a quarter of a million dollars per year by the developers for lobbying is excessive. Furthermore, we were repeatedly assured by both developers and lobbyists that the amounts paid for government relations work relating (directly or otherwise) to the Pearson terminals are typical for projects of this magnitude.

In our view, the fees paid to lobbyists in connection with the Pearson terminals redevelopment project do not provide any reason to single out this project, among all the other projects completed under the previous government or presently underway. In particular, levels of lobbying activity provide no basis for concerns about the integrity of the Pearson process, or scepticism towards the affirmation of its integrity by participants.

The possibility remains that the Nixon report allegations might be justified if it could be argued that, even though no individual lobbyist committed any infraction or violated any norm, the combined impact of the lobbyists was somehow excessive or inappropriate. This argument, however, is no more persuasive than those suggested by Mr. Nixon. The lobbyists were acting on behalf of fiercely competing firms. Their impact was not cumulative. If anything, the presence of several countervailing groups of lobbyists would have reduced their combined impact on the Pearson process.

Our inquiry has, furthermore, established that the pressure periodically felt by those involved in the process was entirely routine. Any project needs working deadlines in order to ensure results. Periodically, those who must meet the deadlines may feel pressures. This does not mean, however, that their work has ceased to meet professional standards, or been corrupted by sinister forces.

Finally, our inquiry has found that equally routine explanations apply to the transfers, at various points, of public officials involved in the Pearson process. With the single

464 See *Proceedings*, 11:53.

exception of Mr. Chern Heed, these departures were unrelated to any views incumbents held about the Pearson process. Even in the case of Mr. Heed, the precise role of dissatisfaction remains unclear, since he departed in order to assume a senior position at Hong Kong International Airport which, one may assume, provided a positive inducement to leave Transport Canada. The other possible case of dissatisfaction was Mr. Victor Barbeau. As we have seen, however, his colleagues at Transport Canada were consistent in their affirmations that he made every effort to move the Pearson deal forward, and his departure from the file was voluntary, responding only to perceptions held by others about his opinions. This record does not support the insinuations in the Nixon report that several transfers were but the outward sign of a wide-ranging "climate of pressure."

Thus we are not persuaded by Mr. Nixon's views on the part played by lobbyists. Indeed, the comments in the Nixon report on the impact of lobbying are so utterly vague that our primary feeling is one of embarrassment for its author.

(iii) Miscellaneous Matters

(a) The Consortium Partners

Several of the issues ascribed importance by Mr. Nixon during his testimony were not actually assigned a place within his three priority categories. We are therefore discussing them as additional matters of tertiary importance.

Mr. Nixon claims that the agreement's failure to identify the consortium partners inevitably raised public suspicion⁴⁶⁵.

The public controversy over the Pearson agreements in October 1993 touched on various aspects, real or imagined; however, we do not recall that the identity of the partners was one of them. Nor did Mr. Nixon provide any evidence to the contrary.

Furthermore, in expanding on this issue, Mr. Goudge stated that, in the contract, "The parties are identified but were not fully made known during the election campaign"⁴⁶⁶. This suggests the objection was not to the agreements at all, but to the level of information provided between the start of the election campaign and 7 October 1993, when the agreements were released from escrow.

We are totally unpersuaded by this objection. Its factual assumptions are as dubious as its logic, which appears to argue that a late November recommendation to cancel the Pearson agreements can be justified by the government's failure to provide

465 *Report*, p. 11, 25:13.

466 See *Proceedings*, 27:12.

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information about them before they were concluded almost two months earlier, at which time the information was provided.

(b) Significance as a Precedent

Mr. Nixon argues that the Pearson agreements would have created a precedent that would have been seized upon by Local Airport Authorities elsewhere in Canada, which would have pressured the government to give them more favourable treatment.

The Nixon report does not specify the terms of the Pearson agreement that Local Airport Authorities might have viewed as precedents. Nor, did Mr. Nixon, at appearances before us, support this claim with concrete argument.

Our conclusion is that Mr. Nixon did not explore this issue sufficiently to understand the basis for statements of concern which he apparently heard, that local airport authorities would view the Terminals 1 and 2 agreements as a precedent.

Had Mr. Nixon explored this issue, he would have found a potential source of dissatisfaction among local airport authorities and a potential need for a clear explanation to these authorities, by the government, of the reasons why their arrangements could not replicate a private sector lease. He would not have found a reason to cancel the Pearson agreements.

(c) Competition Among Terminals

Mr. Nixon argues that the importance ascribed to competition among the Pearson terminals at the outset of the competition, and in the Paxport proposal, was somehow set aside in order to enable the formation of the joint venture between Claridge and Paxport. Claridge was then "forced" to accept a less advantageous position than would have been obtained under its own bid in order to "save" the Paxport proposal and preserve Paxport's participation⁴⁶⁷.

This argument displays the vagueness about facts present throughout the Nixon report. It is claimed, in support of the assertion that importance was initially ascribed to competition, that the Request For Proposals "implicitly indicated that competition ...was desirable." No specific reference to the Request For Proposals is provided. We have closely reviewed the Request For Proposals and find no basis for this claim. The only provision which could be construed as implying the need for competition is a routine provision indicating⁴⁶⁸ that any eventual agreement with a developer would be reviewed under the

⁴⁶⁷ *Report*, p. 9-10.

⁴⁶⁸ *Request For Proposals*, p. 53.

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Competition Act. However this is not, even implicitly, a requirement that the terminals must be in competition with one another. Officials have advised us that this review was carried out in 1993, and that no concerns were expressed by the Bureau of Competition policy about the Pearson agreements.

More broadly, Mr. Nixon's argument flies in the face of the obvious. If the Government had truly wanted to ensure competition among terminals in 1992, it would have made this a requirement of the Request For Proposals, and Claridge who already owned T3, would have been precluded from consideration. Clearly, this did not happen.

Mr. Nixon's argument also relies on some logic which can only be described as bizarre. Standards which would have favoured Paxport were softened so that Claridge could enter the competition, and then be "forced" to participate in a joint venture which would ensure that Paxport could meet other standards which apparently had not been softened.

Our conclusion is that Mr. Nixon's position does not rely on evidence. It is irrational.

(d) Cancellation Clause

The discussion, in the Nixon report, of steps required in order to cancel the agreements includes a comment on the absence of a formal cancellation clause⁴⁶⁹.

It is not clear, in the context of the report, whether the comment on the absence of a cancellation clause is intended as a critical observation, or just an observation. We are responding to it as a possible criticism, however, because the absence of a cancellation clause was raised as a criticism during our hearings, and may have created a concern among observers.

Our evidence from officials was that a cancellation clause is not normally included in long-term lease agreements of the kind required in the Terminals 1 and 2 redevelopment project⁴⁷⁰. Inclusion of such a clause would, for practical purposes, transform a long-term lease agreement into a month-to-month lease which the government could cancel at its convenience. No lender would provide financing of the magnitude involved in the Pearson agreements in the absence of certainty about the lease term.

The general conclusion which emerges here, and which was confirmed again and again during our hearings, is that officials with the required technical expertise were able to provide fully satisfactory explanations for individual technical provisions in the

⁴⁶⁹ *Report*, p. 13.

⁴⁷⁰ See *Proceedings*, 11:25.

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agreements. These provisions do not reflect political direction, or even discernible political interest, but rather the consistent technical competence which public officials brought to their work on the Pearson agreements.

B) Secondary Issues

Many of the allegations made in his report were placed, by Mr. Nixon, in a category consisting of matters described as having a "secondary level of general importance"⁴⁷¹.

(i) Policy Coherence

Mr. Nixon argues that the "process to privatize" Terminals 1 and 2 at Pearson Airport was inconsistent with the government's 1987 Local Airport Authority policy, which favoured the establishment of such authorities to manage major airports⁴⁷².

The Nixon report does not explore the 1987 policy, nor did Mr. Nixon provide specific references to our Committee. As has been seen in Chapter 1, the 1987 policy proposed local airport authorities as the preferred mechanism for the management of entire airports, not individual elements such as terminals. It also specifically encouraged private sector investment and involvement in traditional and non-traditional activities.

The long-term leasing for redevelopment (not "privatization") of the terminals was fully consistent with the policy, and as such was so viewed by both officials and successive Ministers of Transport. Furthermore, as we were repeatedly assured, the Pearson agreements did not preclude the formation of a local airport authority. Preparation of the agreements had included specific discussions of their transferability to a future local airport authority.

Our conclusion is that Mr. Nixon's finding of policy inconsistency is wrong.

(ii) Local Airport Authority Recognition

Mr. Nixon alleges that the Minister of Transport responded to requests for recognition of a local airport authority in the Toronto area with a "steadfast refusal...based on what, in my view, was minor and normal inter-municipal strife"⁴⁷³. The government's recognition of local airport authorities in other cities, in combination with his assessment of the Toronto situation, leads Mr. Nixon to the conclusion that "a perception existed that the

471 See *Proceedings*, 26:11.

472 *Report*, p. 8 and 25:11.

473 *Report* p. 10.

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Government's adamance (sic) that a local airport authority not be recognized was simply to ensure no jeopardy to the award of this project to Paxport Inc."⁴⁷⁴.

The Nixon report provides no evidence that independent support of the allegations of disaffected Toronto local airport authority supporters was sought or received. Our hearings with Mr. Nixon confirmed this impression. Mr. Nixon's finding is merely an uncritical repetition of unsupported allegations by individuals unable to provide an objective, or even a particularly well-informed, assessment of government policy.

Our own findings refute key assumptions made by critics of the Minister's reluctance to recognize the Greater Toronto Regional Airport Authority during 1993. First, as we have seen, the requirement for affected municipalities to provide resolutions supporting a prospective local airport authority was not a special hurdle devised solely for the Toronto area. It dated from 1990, and was originally developed in response to issues that arose in Calgary. Second, Toronto area supporters of a local airport authority were themselves unclear about the requirements specified in the government's recognition policy, a problem exacerbated by the fact that the policy left the Minister without precise guidance for dealing with some of the issues raised in the Toronto situation. Third, "minor and normal inter-municipal strife" is, in our view, a considerable understatement of the political problems impeding the formation of a local airport authority as of 1993 and for which, at that time, no ready solution was apparent.

Our conclusion is that Mr. Nixon's view (repetition of third party opinions hardly qualifies as a finding) concerning the Minister of Transport's response to demands for the recognition of a local airport authority during 1993, is based on seriously incomplete information, and is wrong.

(iii) Terms of the Request For Proposals

Mr. Nixon claimed that any proponent that had previously prepared an unsolicited proposal would have had an "enormous advantage" since expressions of interest were not sought and the submission deadline was a mere 90 days after the issue of the Request For Proposals⁴⁷⁵.

Had Mr. Nixon met with officials involved in the development of the Request For Proposals, he would have been advised, as were we, that its requirements were significantly different from those addressed by unsolicited proposals. Such proposals were made substantially redundant by the Request For Proposals, so that their proponents would have had no specific advantage.

474 *Report* p. 10 and 25:13.

475 *Report* p. 8 and 25:11.

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Mr. Nixon provides no explanation of how unsolicited proposals would have created an advantage for those who prepared them. Such an explanation would have had to take into account the fact that Claridge and a number of other firms had also submitted unsolicited proposals and would thus have shared any advantage thereby gained by Paxport.

The reference to a ninety-day proposal preparation period is also misleading. As has been seen, the formal period was extended to 127 days and there had been an extensive informal period (approximately 17 months), before the release of the Request For Proposals, during which developers knew that the government planned to seek proposals and were able to make general preparations.

No business consortium complained, either to the government at that time, or to us during our hearings, that the preparation period for the proposal was unreasonable. The only complaints of which we are aware came from the group attempting to form a local airport authority during the period when the Request For Proposals was being developed. As has been seen, however, the essential problem for this group was that its attempts had not succeeded.

Our conclusion is that Mr. Nixon's claim that the preparation of unsolicited proposals gave a substantial advantage to firms in meeting the ninety-day deadline is without foundation.

(iv) Competition among Firms

Mr. Nixon argues that information was not distributed widely enough to ensure the maximum possible number of participating firms, and that the formal proposal preparation period was too short to permit latecomers to compete effectively⁴⁷⁶.

We find these claims unconvincing, given that there was a public announcement of the government's intention to seek private sector involvement in terminal redevelopment in October of 1990; and this was widely reported in the media. As many as five unsolicited proposals were received by the Department before the release of the Request For Proposals. This would suggest that the government's interest in private sector involvement was hardly a secret.

Furthermore, officials closely acquainted with the relevant business environments testified that only a small number of consortiums had the interest and capacity to participate in a project involving the redevelopment, operation and management of terminals at a major airport. The department received no complaints from firms claiming to feel excluded from

476 Report p. 8 and 25:11.

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the process⁴⁷⁷, and no firm has complained to us that the process prevented it from competing effectively.

No firm appears to have complained to Mr. Nixon either. His report provides no concrete evidence in support of his allegations that information about the government's intentions was inadequate, and that other competitors could have been found. Nor were he and Mr. Crosbie, who also voiced this criticism, able during our hearings to substantiate their allegations. Mr. Crosbie at one point argued that the government should have prepared its own terminal development plan, and then actively marketed it as a business opportunity. This approach harks back to the traditional public tendering process and entirely sacrifices the challenge to private sector innovation which was a hallmark of the terminal redevelopment process⁴⁷⁸. It would also have involved the government in considerable initial costs.

Messrs. Nixon and Crosbie were also unable to provide any examples of cases where the government has actively marketed a Request For Proposals in the manner which they appeared to advocate. In the end, they provided no substantiation for their claims about the adequacy of the distribution of project information other than vague statements such as: "Well, I think it's a big world out there..."⁴⁷⁹.

We do not deny that it's a big world out there. However, this is not enough to establish the inadequacy of a public announcement made some seventeen months before the release of the Request For Proposals, combined with direct contacts with developers known to be interested. **Our conclusion is that Messrs. Nixon's and Crosbie's allegations that prospective developers were not adequately informed are unfounded.**

(v) Financial Qualifications

Mr. Nixon claims that "no financial pre-qualification was required in this competition," and that the selection of a best overall acceptable proposal without complete assurance of the financial viability of both the proposal and the proponent was "unusual and unwise"⁴⁸⁰. This contradicts the statement by Mr Barbeau to our Committee that:

"In the RFP, what you ask for is that the bidders...put up their business case and, of course, be ready to prove financeability afterwards."⁴⁸¹

477 See *Proceedings*, 8:61.

478 See *Proceedings*, 25:106.

479 See *Proceedings*, 25:107.

480 See *Proceedings*, 25:11.

481 See *Proceedings*, 2:65

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During our hearings, departmental officials and their independent financial advisor made it amply clear that the financial viability of the proposals had been central to the formal evaluation process, carrying a weighting of forty percent. This included an assessment, supported by Richardson Greenshields, of the capacity of proponents to live up to their initial financial commitments. The claim that financial qualifications were not required is therefore incorrect.

A demonstration of the financeability of the proposals, or the ability of the proponent to actually obtain the required financing, was left until after the selection of the Best Overall Acceptable Proposal. This was not unusual. Officials have testified under oath that this is a normal practice in major Crown projects; reflecting the fact that a demonstration obtained too far in advance of a transaction may become outdated.

Testimony made it clear that a demonstration of financeability was demanded, and demanded rigorously, following the selection of the Paxport proposal. The development of reasonable standards was one aspect of this process, reflecting Deloitte & Touche's advice to the department that it would be unrealistic to demand conclusive evidence of financeability at the front end of a development project planned to take place in several phases; since the willingness of lenders to finance the later phases would depend on the success of the earlier phases.

Application of Mr. Nixon's standards, requiring "complete assurance of financial viability" before the selection of a Best Overall Acceptable Proposal, would have dramatically restricted the scope of competition. The rule would have been: "only competitors with deep pockets need apply." Thus Mr. Nixon's complaints about inadequate requirements with respect to financeability are inconsistent with his argument that the competition should have been broadened.

Our conclusion is that Mr. Nixon's complaints about the financial standards employed in the department's formal evaluation process are ill-informed, both with respect to the evaluation process which was employed and with respect to what might reasonably have been expected, given the nature of the project.

(vi) The Public Interest

Mr. Nixon argues that the importance of Pearson Airport to the national transportation system and the Ontario economy requires it to be viewed as a national asset, and that the terminals should therefore have been placed in the hands of a body responsive to the "broadly defined public interest" rather than private sector developers⁴⁸².

482 Report pp. 10-11 and *Proceedings*, 25:11.

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This argument repeats the confusion, apparent elsewhere in the Nixon report, between terminals and the airport as a whole. The terminal redevelopment deal left Pearson Airport firmly in the hands of the government, which we trust Mr. Nixon would recognize as a body broadly responsive to considerations of public interest.

Mr. Nixon's argument also appears to assume that private sector-public sector partnerships cannot be structured so as to allow realization of private sector advantages of efficiency and market responsiveness while at the same time meeting public interest objectives. This assumption belongs to the 1970s, or earlier, and conflicts with the thrust of much contemporary public policy.

More immediately, to provide a reason for objecting to the Pearson deal, Mr. Nixon needed to leave the realm of generalities. He needed to demonstrate that \$750 million in redevelopment investment for the purpose of resolving universally acknowledged problems in Terminals 1 and 2, at no cost to the Canadian taxpayer, was contrary to the public interest. Neither in his report nor during our hearings did he do so. Indeed, an early draft of his report contained comments, later inexplicably expunged, applauding this investment.

According to our evidence, Mr. Nixon received from Mr. Rowat (who negotiated the final agreements) a binder containing detailed clause-by-clause discussions of public interest-related sections of the agreements, and explanations of how the public interest was protected. He was thus provided with ample assistance in the consideration of specific public interest issues, had he chosen to do this.

We conclude that Mr. Nixon's objection to private sector involvement in redeveloping airport terminals at Pearson is not persuasive.

(vii) The Length of the Lease

Mr. Nixon claims that the length of the lease, some 57 years, is excessive. Capital repayment requirements would have been met well before its expiry and technological change makes it likely that transportation in 57 years will be very different from today.

Individuals with specialized knowledge of real estate transactions told us, however, that a lease term in the vicinity of sixty to seventy years would be appropriate for a project involving redevelopment, of airport terminals⁴⁸³. The accuracy of this advice would appear to be confirmed by the Terminal 3 lease, the term of which was reflected in the Terminals 1 and 2 lease, and local airport authority leases of comparable length. Mr. Nixon did not

483 See *chap. III*.

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suggest that his opinion on this matter reflects expert advice that would conflict with that provided to our Committee.

It is impossible to deny the broader claim that transportation and airport requirements may change substantially over a sixty-year period. However, the Nixon report and Mr. Nixon's comments during our hearings leave us mystified about exactly how this would go against the leasing of the terminals to private sector developers. As a private sector operator, Pearson Development Corporation's need to protect its revenue stream and profitability would have provided a strong incentive to keep the terminals attractive to airlines and passengers, and competitive with other facilities. **As well, the lease terms required the terminals to be maintained at world-class standards. In our view, the lease was not a barrier to meeting the needs of the future. On the contrary, it helped to ensure that the developer would do more than take merely a short-term approach to emerging needs.**

Our conclusion is that, Mr. Nixon's objections to the length of the lease are without foundation .

(viii) The Revenue Stream

Mr. Nixon argues that the revenue stream to the government under the Pearson agreements was "far from overwhelming"⁴⁸⁴. He claims that returns during the early years of the agreement would have been less than in recent years, and that future returns would have relied on "aggressive" pricing, which would have run the risk of making Pearson uncompetitive.

Mr. Nixon does not specify the ideal balance implied by his argument: high enough at least to approach being "overwhelming," but not high enough to require anything that might be described as "aggressive." Several elements of the argument are, however, specific enough to permit a response.

First of all, the fact that revenue to the government during the first several years would be relatively low reflects the rent deferral arrangement. As has been seen, this package of provisions involving lowered revenues to both the government and the developer had been agreed upon in order to minimize cost increases to the airlines during a period of financial constraint. Mr. Nixon does not mention that, rather than a loss of revenue to the government, there was to be a deferral of revenues, to be paid subsequently with interest.

More broadly, complaints about the government's revenue ignore the fact that the Pearson agreements served multiple objectives: they were not simply a business deal. Even so, the specialists who advised the government concluded that the revenue to the Crown fell

484 Report p. 11 and see *Proceedings*, 25:12.

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within the range of reasonable returns. Mr. Nixon does not specify what level of revenue he might have considered acceptable, or provide a clear basis for his dissatisfaction.

According to our witnesses, the "aggressive" pricing envisioned by Mr. Nixon at later phases of the lease would only have brought charges at Terminals 1 and 2 into line, eventually, with those at Terminal 3. This is hardly a formula for uncompetitiveness. More broadly, Mr. Nixon's argument continues to ignore the implications of market forces, which would have acted on the operators of the Pearson terminals to keep costs in line with other competing hub airports.

Once again, we are unpersuaded by Mr. Nixon's complaint. His charge of a low level of revenue to the government is not merely unfounded, it is expressed in terms that are so lacking in precision that it appears to be self-contradictory.

(ix) Returns to the Developer

The report expresses Mr. Nixon's agreement with advice from Mr. Crosbie: "...as I have been advised by my business evaluation advisor the rate of return provided to the T1 T2 Limited Partnership could, given the nature of this transaction, well be viewed as excessive"⁴⁸⁵. In his appearance before us, however, Mr. Nixon put some distance between himself and this advice. He stated merely that he had received advice, which he let speak for itself⁴⁸⁶.

There are several reasons why Mr. Nixon might wish to distance himself from his original position. First, his report does not explain why he accepted Mr. Crosbie's evaluation, rather than the one prepared during the negotiations by Deloitte & Touche, and which found the return to investors to be reasonable. A hint of a justification may be found in Mr. Nixon's references, during our hearings, to the "independent assessment" provided by Mr. Crosbie⁴⁸⁷. Yet Mr. Stehelin of Deloitte & Touche was clearly independent too, as is amply demonstrated by his refusal in his March 1993 report, to validate the financeability of the Paxport proposal. Furthermore, his August 1993 report affirming that returns to the developer were not excessive was based on six months of work which must have given him a far greater degree of familiarity with the issues involved than Mr. Crosbie could have achieved in a relatively short time of less than 3 weeks.

Second, rather than saying the return to the developer is excessive, or should be so seen, the Crosbie finding says only that it "could, given the nature of the transaction, well

485 *Report*, p. 22.

486 *See Proceedings*, 25:13.

487 *See Proceedings*, 25:74.

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be viewed as excessive." This guarded statement hardly provides an adequate basis for making decisions or even meeting Mr. Nixon's more modest objective of arriving at "opinions."

The imprecision of the Crosbie finding appears to recognize that identifying a fair return with respect to the redevelopment of airport terminals is, as Mr. Stehelin advised us, no simple matter. Mr. Crosbie's report to Mr. Nixon accepts as "reasonable" the assumptions on which the financial projections of the Pearson Development Corporation were based, and arrives at an after tax rate of return of fourteen percent, which rises to 14.2 percent when management fees are included. These figures are in line with those provided to us by Mr. Stehelin and departmental witnesses.

The Crosbie report then considers the standards for judging the adequacy of these returns. One possible standard, based on returns to utilities, places the projected return within the reasonable range, even after the range has been reduced by one per cent (from that used by Deloitte & Touche) to reflect a claimed "approximate 1% decline in after tax utility returns since August 1993"⁴⁸⁸.

Discussion of a second possible standard, based on rates of return for real estate investments, recognizes a variety of factors in the Pearson agreements, that add and subtract risk. It notes that the limited scope of Mr Crosbie's engagement prevented his questioning potential real estate investors as to the rates of return they would require for a terminal redevelopment project. It concludes, however, that "our preliminary sense would be that from a real estate point of view, the above projected rate of return (23.6% before taxes over the life of the project) could well be in excess of that required in the market place"⁴⁸⁹.

It is not clear whether the discussion included in the Crosbie report of returns for Terminal 3 is to be seen as implying a third potential standard, because the report recognizes that there are problems in comparing Terminal 3 with Terminals 1 and 2, as well as in establishing current rates of return. Mr. Crosbie's conclusion was that a before-tax rate of return of 14.1 per cent provides "a sense of the level of the before tax rates of return that were required by the equity owners in Terminal 3."

To Mr. Crosbie's credit, his report to Mr. Nixon attempts to convey the subjective nature of the selection of any basis for assessing rates of return, and the complexities involved. Less helpfully, the report does not discuss the respective merits of the possible standards identified and leaves the reader to make an arbitrary choice between at least two standards, one of which validates the Pearson agreement and the other of which suggests that the rate of return could well be above what the market would demand. Moreover, it should

488 *Crosbie Report*, p. 4.

489 *Crosbie Report*, p. 6.

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be kept in mind that the Toronto real estate market was widely recognized to be at the bottom of its business cycle in late 1993, raising doubts about the appropriateness of a real estate-based standard with respect to a long-term lease arrangement.

The third possible standard is markedly different from the other two. We can only suggest that, if accurate, these figures may confirm that Claridge's intentions, as described by Mr. Coughlin, were to use Terminal 3 as a first step towards acquiring a role in all three terminals, rather than solely as a source of short-term returns.

The Crosbie report thus provides an extremely fragile basis for criticizing the returns to Pearson Development Corporation. It required Mr. Nixon to choose arbitrarily the standard that would support criticism and to interpret "could well appear to be in excess of that required in today's market," as meaning "too high." Mr. Nixon did not hesitate, however. He formed an opinion.

The fact that Mr. Nixon arrived at an unqualified opinion becomes even more striking when his views are examined in relation to the 18 November draft of the Crosbie report which we have had an opportunity to review. In this draft, Mr. Crosbie's conclusion about the rate of return to the developer was that "a pretax compounded rate of return of 23% to the providers of equity may not be unreasonable."⁴⁹⁰ **Interestingly, a working draft of the Nixon report, also dated 18 November, describes the return to the developer as unconscionably high over the life of the Pearson agreements.⁴⁹¹ This conclusion prevailed in the final drafts of both the Nixon report and Mr. Crosbie's report to Mr. Nixon, leaving us to wonder whether Mr. Nixon's opinion was based on the Crosbie report, or the reverse.**

We must note that, during our hearings, Mr. Crosbie provided us with an additional analysis, performed after the cancellation of the deal, presumably to bolster what may have been recognized as a fragile case. This analysis did little more than demonstrate the obvious; for example, that a lower rate of return to the developer could have permitted significantly higher returns to the government⁴⁹². The pattern of ambiguity established in the earlier Crosbie report was maintained: "Based on our analysis, it would appear that the government should perhaps well have been able to achieve significantly more than they did"⁴⁹³.

490 See Proceedings, 30:78

491 See Proceedings, 30:79-80

492 See Proceedings, 27:20.

493 See Proceedings, 27:22.

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Our conclusion is different. We are not persuaded. A generous view of the Crosbie findings is that they provided Mr. Nixon with a reason to recommend further study of the matter, but nothing more.

We note, as well, that Mr. Nixon's findings are not supported in the position now taken by the federal government itself. The government is arguing before the Ontario Court adjudicating a suit brought against it by the developer that, based on sworn affidavits by Mr. Desmarais, the return to the developer would have been negligible, and that there is therefore no need to provide the developer with compensation for the cancellation of the deal.

(x) Passenger Diversion in 75 Km Radius

Mr. Nixon objects to the 33 million passenger diversion guarantee, on the grounds that "information I received strongly suggested that pressure for such alleviation would commence when a 30 million per year figure was reached"⁴⁹⁴. The government's inability to divert passengers to airports within a 75 kilometre radius from Pearson unless traffic at Pearson remained at over 33 million passengers per year is portrayed as a needless policy constraint, which could create overcrowding at Pearson Airport and underdevelopment at nearby airports.

As we have seen, government negotiators recognized that a diversion guarantee was a legitimate protection for developers. Without such a protection, developers would have had to assume all risks created by the possibility that a future government might expand one or more of the dozen airports within a 75 kilometre radius of Pearson Airport, or develop the Pickering lands, and drastically reduce traffic and revenues at Pearson by reallocating traffic. It was also recognized that a passenger diversion guarantee would assist the developers in obtaining financing, and strengthen their case for favourable rates. **The issue was what a reasonable diversion threshold would be, not whether there should be one. It is noteworthy that the Nixon report shares this understanding of the issue: it does not question the need for some form of protection for the developer against diversions of traffic.**

First of all, our evidence conclusively refutes the suggestion that a passenger diversion guarantee at Pearson would have prevented development needed at nearby airports. A Transport Canada briefing document indicates that the passenger volume at the four other airports in the Toronto area as of 1993 was 285,000, and the capacity of these airports was 1.1 million. There was thus considerable room for passenger volume growth before further development would be required at these airports. Had this point been reached before volume at Pearson exceeded 33 million, according to the Department, the provision allowing

494 See *Proceedings*, 25:13.

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diversions of up to 1.5 million passengers away from Pearson Airport ensured that any needed expansion at other airports could occur. The conclusion in the briefing paper is that: "growth at the above noted sites would have to increase by approximately 1,000 % in the next ten years for the diversion clause to be of concern." This paper was provided by Mr. Rowat to Mr. Nixon, but the Nixon report shows no sign that it was considered.

The Nixon report also provides no direct evidence in support of the contention that traffic levels over 30 million passengers per year might cause overcrowding at Pearson, and Mr. Goudge's comments during our hearings suggest that opinions on this issue were not sought from qualified departmental officials. The Nixon report does, however, refer to "staff opinion" in the submission considered by Treasury Board in August 1993.

Access to the Treasury Board submission has been denied to us on the grounds that Treasury Board submissions are cabinet confidences. We can, however, suggest that this opinion would need to be viewed in the context of the role of the Treasury Board Secretariat. As we have seen, the Secretariat develops internal challenges to departmental proposals, and provides Ministers with suggested questions and issues in order to assist them in scrutinizing proposals effectively.

Our extensive sworn testimony from public officials refutes the allegations which have been publicly ascribed to the Treasury Board submission and, in particular, the view that overcrowding of the airport would have become a problem above the threshold of thirty million passengers per year⁴⁹⁵. The negotiating "black book" developed in late June to guide the remaining negotiations, which presumably reflects the views of qualified departmental officials on the capacity of the airport, maps out a number of options for protecting the developer against major diversions of passengers away from the airport. The options identified are a flat 33 million passengers per year guarantee; a 28-30-million passenger per year guarantee, with government entitlement to divert being conditional upon capacity or level of service problems between this threshold and one of a 33 million passengers per year; and a threshold of 33 million passenger per year which could be removed, by the government, upon the release to the developer of an additional package of land (Area 4). In these options, the threshold of 33 million passengers per year figures prominently. It is preposterous to suppose that government negotiators would have mapped out their bargaining position based on a passenger volume threshold that they believed would cause problems.

According to our testimony, the capacity of the three Pearson terminals in the early '90s was in the order of 28 million. It must be recognized that, in the words of the official who provided the estimate, "capacity is very much a subjective thing"⁴⁹⁶. While the central

495 See *Proceedings*, 29:88.

496 See *Proceedings*, 6:22.

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purpose of the Pearson agreements was to modernize the terminals, the evidence suggests that they would have increased capacity moderately, as a result of improved overall efficiency and the addition of two new gates. Reflecting this, a departmental official referred during our 23 October 1995 hearing to a post-redevelopment capacity envelope of 28 to 33 million passengers per year. The 33 million passenger diversion threshold thus seems reasonable, especially when it is recognized that the agreements permitted diversions of up to 1.5 million passengers per year below the threshold, before compensation to the developers would be required.

The diversion threshold recommended by negotiators from the two sides, and ultimately incorporated in the agreements, necessarily reflected the give-and-take required by negotiations. It is noteworthy, however, that Pearson Development Corporation had initially sought a threshold of 39 million passengers. The 33 million passenger threshold incorporated in the agreements demonstrates that government negotiators successfully lowered the figure to reflect the bottom lines they had established before negotiations began.

Our conclusion is that the diversion threshold sought and achieved by the Government reflected a reasonable assessment of the capacities of the Airport after redevelopment and did not threaten progress at nearby airports. Neither the Nixon report nor our evidence provide any basis for Mr. Nixon's suspicions.

3. The Most Significant Issue

Mr. Nixon singled out one "leading issue," indicating that "more than anything else this is a matter that has concerned me": the circumstances under which the Pearson agreements were concluded. The emphasis on the special importance of this primary issue was repeated in Mr. Nixon's description of it during our hearings, when it was introduced with the phrase: "However, most significant to me..."⁴⁹⁷.

We note, however, that the Nixon report gives no indication that special significance was attributed to what had become, by the time of our hearings, Mr. Nixon's primary complaint. The language of the report (which was otherwise faithfully reproduced by Mr. Nixon with respect to this issue during our hearings) is as follows:

Finally, the concluding of this transaction at Prime Ministerial direction in the midst of an election campaign where this issue was controversial, in my view flies in the face of normal and honourable democratic practice. It is a well-known and carefully observed tradition that when governments dissolve Parliament they must accept a restricted power of decision-making during the election period. Certainly the closing of a transaction of significant financial

497 See *Proceedings*, 25:11.

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importance, sealing for 57 years the privatization of a major public asset should not have been entered into during an election campaign⁴⁹⁸.

As with Mr. Nixon's other major objections, the language he employed to express his views creates difficulties in determining their precise basis. His objection to the concluding of the agreements during the election campaign does not actually refer to a constitutional convention, although references to "honourable democratic practice" and apparently prescriptive "traditions" strongly suggest that this is what he had in mind.

Mr. Nixon's views on the subject of constitutional conventions did not benefit from the advice of any academics or other specialists on this matter, nor were they justified with any references to such authorities⁴⁹⁹. They appear to be simply statements of personal conviction. As we have already observed, however, personal convictions, no matter how strongly felt, are not constitutional conventions.

Our own findings on the issue of unwritten constitutional conventions provide no basis for Mr. Nixon's views. Discussions with academic authorities confirmed that there is a convention applying to government behaviour following defeat at the polls or in Parliament. However, we found no evidence of a convention that restricts governments undefeated in Parliament in what they can do during an election period. Indeed, the convention is that they continue to have the duty and obligation to govern in this period.

Furthermore, according to the one academic authority who argued in favour of a constitutional convention restricting government action during the election period, this convention would only apply if the concluding of the Pearson agreements was an act going beyond "routine matters of administration."⁵⁰⁰ Unless the concluding of the Pearson deal can be characterized in this way, it is not even a potential violation of the alleged constitutional convention which our evidence has led us to reject.

Mr. Nixon's apparent assumption that what he describes as the "closing of a transaction of significant financial importance" qualifies as a matter beyond routine administration is highly questionable. As he recognizes, it was the closing of an agreement which had already been reached, before the election was called. As our evidence establishes, the closing date had itself been agreed between public officials and the developers back in July of 1993, and the substantive agreements were reached in August with Treasury Board and Cabinet approval. Had substantive changes occurred after August, a further submission

498 *Report*, p. 8.

499 See *Proceedings*, 25:45-46.

500 See Chapter V, *Observations and Conclusions*.

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to Treasury Board would have been required, and our witnesses have unanimously testified that this was not necessary.

As Minister Corbeil described the events of October 1993, all that occurred was the routine signing of legal documents which had been prepared by officials during September, in order to conclude the agreements reached in August. It was not the concluding but the refusal to conclude which would, at this juncture, have gone beyond the realm of routine administration. In our view, if a constitutional convention prohibiting significant decisions had applied to the government on October 7 1993, it would have required the concluding of the deal rather than a decision not to conclude it.

It could still be argued that, while the concluding of the agreements during an election campaign was entirely proper, it was politically imprudent, given the existence of significant public controversy. This view was expressed by academics with whom we consulted⁵⁰¹ but reflects a highly political judgment which, in our opinion, lies well outside the fields of technical expertise of our academic panel. However, it provides an alternative basis on which Mr. Nixon's objection might rest.

The view that concluding the deal was politically imprudent is, however, highly dubious. Political controversy arose during the election campaign because individuals with a personal stake in the formation of a Toronto Local Airport Authority went to the media, and because the then Leader of the Opposition, Jean Chrétien, was predictably in his capacity as Opposition Leader, criticizing the government. To argue that the government should have capitulated to this criticism and refused to comply with a closing date adopted in July 1993 comes perilously close to arguing that it is the opposition political parties that should govern during the pre-election period. The constitutional convention, however, is that it remains the government's obligation and duty to continue to govern after the Writs of Election are issued.

Such an argument also ignores the serious practical consequences which would have been triggered by a decision, on the part of the government, not to conclude the final agreements. Unless the developers could have been persuaded to voluntarily postpone the deal, which was the only alternative suggested by officials, the developers would have taken the government to court.

The question of liability of the parties, one to the other, as they proceeded along the path of contract negotiations was raised at various times during our hearings. Both Mrs. Bourgon and Mr. Rowat referred to "increasing liability at every stage."

Indeed, it could be argued that during August and September 1993 the parties were in the position described by Professor G.H.L. Fridman, an authority on contract law, in *The*

501 See *Proceedings*, 24:42.

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Law of Contract in Canada (Third Edition, Toronto, Carswell, 1994, p. 23). Pearson Development Corporation and the Government of Canada may be described as having "reached a stage in their negotiations in respect of which it could be said that they had shown not only an intent to be bound together, but the nature, extent and manner of their being bound so as to give rise to a legally recognizable and enforceable contract."

The decision to conclude the agreements on 7 October 1993 was entirely proper. It respected the closing date agreed upon by government officials and the developer in July 1993 and avoided costs to the Canadian taxpayer that would have been incurred had a decision been made to refrain from signing.

What occurred on 7 October 1993 was not an attempt to ram the Pearson deal through before a change of government. It was the completion, on its long-scheduled closing date, of a protracted process in which the critical decisions had all been made well before the issue of the Writs of Election.

In our view, Mr. Nixon's opinion expresses a highly personal reaction predominantly reflecting the intensely partisan feelings aroused during election campaigns. It is not supported by any constitutional convention recognized in Canada, in contract law, or by reasonable considerations of political prudence.

4. The Nixon Priorities

We asked Mr. Nixon, during our hearings, to prioritize the various issues raised in his report in order to rectify what we view to be a serious omission in the report. The report provides no indication of the relative weight of the various objections raised to the Pearson agreements and the process which produced them. It simply declares an overall recommendation after reciting a heterogeneous collection of complaints, some of them about the substance of the deal, some about the process, and some (as we have demonstrated) not clearly about either.

The absence of attention to priorities reflects, in part, an absence of attention to clear standards. Nowhere in the report does Mr. Nixon provide a clear statement of the standards which he required the Pearson agreements to meet. There are no suggestions with respect to the standards which an incoming government might reasonably employ in reviewing the activities of its predecessor, and particularly in making decisions having such extensive implications as the decision to cancel these agreements. His report provides no clear indication as to which of his allegations are of major importance and which are relatively incidental, and no indication of how he determined when the overall weight of his findings became sufficient to warrant a recommendation to cancel. After reading his findings and conclusions and, we would add, exploring this issue with him during several days of hearings, we remain mystified as to the precise connection between what Mr. Nixon found, or thought he found, and what he recommended.

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If anything, Mr. Nixon's comments during the hearings deepened our puzzlement. As has been seen, Mr. Nixon's statement of priorities indicated that, if any of his concerns was decisive in the decision to recommend cancellation, it was the concluding of the agreements during the election campaign, at the direction of the Prime Minister and in circumstances of political controversy.

However, even if a clear constitutional convention had been violated by the concluding of the agreements in October of 1993, the appropriate remedy would not have been cancellation. As we have argued at the outset of this report, cancellation is only an appropriate remedy if those who would be affected by it deserve to be punished, or if the substance of an agreement is so clearly contrary to the public interest that the agreement requires termination on these grounds. If a constitutional convention had been violated, however, the parties guilty of its deliberate or accidental disregard would have been the Prime Minister and Minister of Transport, not the developers, travelling public and Canadian taxpayers who have borne the brunt of the punishment Mr. Nixon recommended.

In the absence of a violation of a constitutional convention, and we have concluded there is no violation, then surely the date on which the contracts were concluded is irrelevant. The contracts are either adequate or they are not. Mr. Nixon, by selecting the closing date as the most important basis for his cancellation recommendation, is implicitly acknowledging the adequacy of the contracts.

Our conclusion, based on Mr. Nixon's account of his priorities, is that what he viewed as his most important complaint about the Pearson agreements, would not have supported a recommendation to cancel them.

5. Concluding Remarks

A) The Nixon Report

Mr. Nixon told us several times during our hearings that he conceived his task to be, "the provision of personal opinion and advice...to the Prime Minister," to assist with decision-making about the Pearson agreements. Clearly, the review he conducted allowed him to form an opinion, and to provide advice.

In our view, however, his task was not merely to form an opinion, it was intended that he form a responsible opinion, on which the Prime Minister of Canada could safely rely in deciding the fate of an \$750-million development project reflecting literally years of work by a large team of publicly paid officials, as well as the developers, and having implications for airlines, passengers, the economy of the region of Toronto and, ultimately, the credibility of the government in future business deals.

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Mr. Nixon's conclusions are almost entirely without foundation, as they are based on unsupported aspersions cast by disaffected individuals with the strongest motivation to seek him out and criticize the Pearson project. The conclusions are, furthermore, remarkably consistent in the indirectness and imprecision of their language and in the apparent absence of careful thought about the standards they reflect. They do not deserve to be described as "investigatory findings" or even, in Mr. Nixon's word, "opinions." They are merely impressions, masquerading as conclusions.

Leaving them aside, and considering solely the process employed by the review, we are left with serious concerns about Mr. Nixon's judgment in providing firm advice to the Prime Minister. The time-frame in which he worked, and the information and analysis he obtained, were demonstrably inadequate as a basis for unqualified conclusions about an arrangement as complex and important as the Pearson redevelopment deal.

Furthermore, the vagueness of the standards which Mr. Nixon applied to the Pearson agreements enabled him to avoid a serious consideration of the various options available to the government, and careful thought about which was most appropriate as a remedy for the flaws he perceived.

The possibility that the government could seek to renegotiate any aspects of the agreements with which it was not satisfied was presented to Mr. Nixon as an option in a memorandum provided by Mr. Rowat at the outset of the Nixon review. This option would have been a more appropriate response to Mr. Nixon's findings than a recommendation to cancel the entire agreement. By cancelling the agreement, the government brought to a halt a redevelopment program which Mr. Nixon himself acknowledged was extremely attractive, postponed the solving of problems in the terminals, and punished a range of people who have no connection with what Mr. Nixon claims was the central flaw, the concluding of the agreements during an election campaign.

Mr. Nixon would have served his Prime Minister, and his country, better had he recognized the limitations in the time-frame set for his review. A recommendation for further study to enable a responsible decision would, we believe, have opened the door to a more careful consideration of the whole issue. The substantive errors upon which Mr. Nixon's recommendation was based would have been revealed before it was too late. There would have been time, as well, for careful thought about the alternative options available to the government, including the possibility of renegotiating individual provisions of the agreements so as to obtain specific improvements.

B) The Cancellation Decision

Prime Minister Chrétien clearly placed enormous reliance on Mr. Nixon's judgment, since he announced the cancellation of the Pearson agreements only four days after receiving the Nixon report, and provided no other basis for this decision.

As a result of this decision, several important and highly desirable things did not happen. There was no development of Terminals 1 and 2, the need for which was almost universally recognized, and the window of opportunity to develop the terminals in advance of anticipated passenger demand was closed.

An innovative private sector-public sector partnership model, which would have been immediately relevant in the era of reinventing government, was not established.

A globally recognized Canadian participant in the airport development and operations business was not created; with consequences in terms of lost opportunities and revenues which cannot accurately be estimated.

The anticipated employment of up to 1,000 people on site during the redevelopment process, the still-needed shot in the arm to the Toronto construction industry in the fall of 1993, and the estimated thousands of indirect jobs which would have been created in the Toronto region, all failed to materialize.

At the same time, the cancellation had a number of undesirable effects. First of all, the developers launched legal proceedings against the federal government, triggering the immediate spending of taxpayers' dollars for the purposes of legal defence and creating the possibility of further spending related to legal settlements.

Second, the government tabled draconian legislation which would remove the rights of the developers to seek normal redress through the courts and, if enacted, provide a precedent that could cast a permanent chill over relations between the government and commercial partners.

Third, the Matthews Group went out of business; some 750 people lost their jobs and many remained unemployed as of 13 September 1995, the date on which Mr. Don Matthews appeared before us.

This is a dismal ledger. Ostensibly made to uphold the public interest, the decision to cancel the Pearson agreements has achieved nothing positive for Canadians. We think it reflects an unaccountable lapse in judgement.

“Emotions stemming from electoral campaigns are a seriously inadequate basis for responsibly addressing the complexities of sound public policy-making”

Special Senate Inquiry into
the Pearson Airport Agreements

In the course of our hearings, we have developed a series of findings and preliminary conclusions. These have been set out in the final section of each chapter of this report, and are gathered together immediately below. In addition, we have supplemented these conclusions where appropriate.

These findings and preliminary conclusions provide the basis for our main conclusions which address the fundamental issues which have been raised about the Pearson agreements, and for the recommendations which follow.

The Process

1) We conclude that there is no evidence to contradict the unanimous affirmation, by participants, of the complete integrity of the process from which the Pearson agreements emerged, beginning in 1990 with the decision to seek private sector involvement in redeveloping the terminals and ending in late 1993 with the completion of negotiations, Cabinet approval and the conclusion of the agreements.

2) We conclude that at all stages, the safeguards which ensure that private interests do not override the public interest as perceived by the democratically elected representatives of the people were fully operative and were in no way compromised in all aspects of the Pearson redevelopment process.

The Policy Framework

3) We conclude that the 1987 airports devolution policy, and the new focus on commercial orientation and private sector involvement, did more than provide an imaginative solution to problems of the mid-eighties relating to Transport Canada's role in managing airports. It anticipated broader initiatives of the nineties, including the program review of 1994-5 with its comprehensive attempt to more tightly focus the role of government in the economy.

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4) We conclude the public servants who crafted the emerging airports policy during this period should feel a sense of real accomplishment at having implemented the vitally important first steps in a new direction for this policy sector. Equally, the public policy vision which provided guidance to officials should be recognized for what it was, a prescient anticipation of the realities of the nineties.

5) We conclude that the leasing of T1 and T2 to the Private Sector, requiring the private sector to redevelop the terminals, conformed to the policy of the federal government.

The Decision to Seek Private Sector Involvement

6) We conclude that the demand for terminal redevelopment, as expressed to the Minister by an extensive range of airport users and beneficiaries, was urgent and the government's decision to proceed was sound.

7) We conclude it would have been irresponsible to refrain from even the first steps towards redevelopment, on the grounds that there were some signs of an emerging interest among Toronto municipalities in establishing a mechanism to manage the airport, including terminals.

8) We conclude that a refusal to act in 1990 by the Minister, and wait for the formation of a Local Airport Authority, would have left him open to justifiable accusations of ignoring the expressed needs of the Toronto Region to modernize Terminals 1 and 2.

9) We conclude that a course of deliberate inaction in 1990 would have gone directly against the spirit of the 1987 policy, which was precisely to release airports from thralldom to centralized government management and let them respond directly to local needs and the requirements of the travelling public.

10) We conclude that we are in agreement with the witnesses from Air Canada, who stated that 1993-94 was the ideal period during which to commence the redevelopment of Terminals 1 and 2.

Developing and Releasing the Request For Proposals

11) We conclude that the Government benefitted from its experience related to the construction of Terminal 3, by the private sector. This was experience, which it transferred to the T1, T2, redevelopment process.

12) We conclude that because the government sought input from all those who were interested in the content and makeup of the Request for Proposals, concerns such as those expressed by the airlines were fully and satisfactorily addressed in the Request For

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Proposals, as is confirmed by the eventual ratification of the Pearson agreements by Air Canada.

13) We conclude that the case for delaying redevelopment in order to accommodate advocates of a Toronto local airport authority was no stronger in 1992 than it had been in 1990. If anything, it was weaker, since the Request For Proposals provided tangible evidence that terminal redevelopment would not preclude the establishment of a local airport authority, and indeed could eventually be managed by such an authority.

14) We conclude that the technical requirements of the Request For Proposals reflect the complete success of the Minister and officials in maximizing the public interest through a fair competitive process. Considered collectively, the technical requirements of the Request For Proposals challenged the private sector to provide the Government, and Canadians, with innovative solutions to the need for modernization of the Pearson terminals and to participate in a fair and open competition to determine which proposal would be selected.

15) We conclude that as a result of the long lead time between the announcement that an RFP would be called and the issuance of the RFP (some 17 months), and the fact that those capable of carrying out such a project were well known, because of the T3 contract, it was deemed unnecessary to go through an expression of interest stage, and the time to respond could be set at 90 days, (although later expanded to 127 days) the norm in such procedures.

16) We conclude that the Request For Proposals was scrupulously fair. Indeed, as a concrete example of the fresh thinking called for by the 1987 airports management policy, it was exemplary.

The Decision to Announce a Best Overall Acceptable Proposal

17) We conclude that between 16 March 1992 and 7 December 1992 the Department of Transport administered an evaluation process of impeccable thoroughness, and note, the evaluation team presented a unanimous report.

18) We conclude that this evaluation process was rigorous in all aspects and further note, it was supervised by Price Waterhouse, audited by the accounting firm of Raymond, Chabot, Martin and Paré and the financial plans submitted by the proponents were scrutinized by financial experts from Richardson, Greenshields.

19) We conclude that the announcement of a Best Overall Acceptable Proposal in December 1992 was not merely consistent with the public interest, but required by it.

20) We conclude that the only thing that would have made this announcement inappropriate would have been a Government decision, against the considerations we review in Chapter IV, to abort the entire process and do nothing about the terminals.

The Negotiation and Concluding of the Agreements

The Local Airport Authority

21) We conclude that it would have been irresponsible to delay redevelopment in 1993, in the hope that the political problems which beset Toronto's local airport initiative would soon be resolved. To do so would have been to substitute wishful thinking for effective action to address the problems in Terminals 1 and 2 at Pearson Airport.

22) We conclude that the position taken by the government, that the City in which the airport is located, Mississauga, had to confirm its unconditional agreement with the creation of an LAA, prior to one being recognized for the Greater Toronto Area was sound.

23) We conclude, that from 1989 to October 7, 1993, there was no Local Airport Authority established for the Greater Toronto Area to which the Pearson Airport could have been transferred.

The Merger

24) We conclude, that the decision to explore the synergies involved in the amalgamation of the efforts of the two bidders was theirs, and theirs alone.

25) We conclude, that there is absolutely no evidence of collusion between the proponents prior to December 7, 1992.

26) We conclude, that the merger of the two proponents was not directed by anyone in government or in the public service.

Liability

27) We conclude, as have many of our witnesses, that with the passing of each significant milestone in the negotiation process and in the signing, concluding, and releasing of the contracts from escrow, the exposure of the parties to legal liability, if either one of them had withdrawn, would have been real and significant.

28) We conclude that by the end of August, 1993, if not before, the parties had reached a stage in their negotiations that their intent to be bound together gave rise to a legally recognizable and enforceable contract.

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Closing the Transaction

29) We conclude, that Government decision-making during the period between the issue of the Writs of Election and the vote was not subject to a restrictive constitutional convention. The Prime Minister and Minister of Transport committed no constitutional infraction in the fall of 1993 when they carried out their respective roles in the closing of the Pearson Airport project. On the contrary, they merely performed their duty to continue to govern until the will of the people had been expressed on election day.

Lobbyists

30) We conclude that while lobbyists were active on this file, their major efforts were related to the gathering and dissemination of information to their clients.

31) We conclude that with all of the witnesses from the private and public sector, who were involved in the Pearson process that lobbyist's actual influence over the selection, negotiation, and decision-making process was nil.

Rate of Return

32) We conclude, that the rate of return to the developers and to the Crown under the Pearson contracts was fair, given the risks involved, and the investment required for this project.

The Project

33) We conclude, that given these circumstances, the Pearson contracts providing \$750 million of private sector investment to accomplish redevelopment objectives, which would otherwise have had to be met with public spending, were concluded in the best interests of all Canadians.

34) We conclude, that the evidence leaves no room for doubt that the negotiators of the Pearson development agreements faced an enormously difficult task, given the complexity of the project and the other circumstances we have detailed above. They ensured that the original objectives of the government were met, and obtained what could have been lasting value for Canadian taxpayers in the redevelopment of Terminals 1 and 2.

The Cancellation of the Agreements

The Nixon Report

35) We conclude, that the Nixon Report is without foundation, and amounts to unsupported aspersions cast by those disaffected individuals who had the strongest motivation to seek out its author. It is furthermore, remarkably consistent in its ambiguity of language and in the apparent absence of careful thought about the standards which it reflects. It does not deserve to be described as an investigation in the accepted sense of the word. It is a collection of impressions, masquerading as conclusions.

36) We conclude, that given the process he employed by the review, we are left with serious concerns about Mr. Nixon's judgement in providing firm advice to the Prime Minister. The time-frame in which he worked, and the information and analysis he obtained, were demonstrably inadequate as a basis for unqualified conclusions about an arrangement as complex and important as the Pearson redevelopment project.

37) We conclude, that Mr. Nixon would have served his Prime Minister, and his country, better if he had recognized the limitations imposed upon him by the time-frame set for his review. A recommendation that further study was needed in order to enable a responsible decision would, we believe, have opened the door to a more careful consideration of the whole issue. The substantive errors upon which Mr. Nixon's recommendation was based would have been revealed before it was too late. There would have been time, as well, for careful thought about the alternative options available to the government, including the possibility of renegotiating individual provisions of the agreements if specific improvements were thought necessary.

The Cancellation Decision

38) We conclude, that the decision to cancel the Pearson agreements has achieved nothing positive for Canadians, and has involved some serious costs. We think it reflects an unaccountable lapse in judgement by the Government of Canada.

Main Conclusions and Recommendations

Our inquiry into the cancellation of the Pearson Airport agreements has left us with four fundamental conclusions, reflecting the standards that we have argued are appropriate to this purpose.

First, we have found no evidence in relation to the redevelopment of the terminals of Pearson Airport, that any public officials knowingly set aside what they believed to be the public interest in order to favour a private interest, at any point during the process or before its inception.

Second, we have found no evidence that political pressures or other circumstances compromised the process through which the Pearson agreements were developed, or that the elected and appointed public officials and private sector participants involved failed to perform their respective duties to a high professional standard.

1) We conclude, that the Nixon Report's insinuations with respect to the preferential treatment of the Paxport proposal and the Paxport consortium, constitute an unwarranted slur on the professional competence of the many individuals who worked to bring the Pearson Agreements about.

Third, we have found no reason to call into question the underlying public policy thrust expressed in the Pearson agreements. On the contrary, we believe they involved an imaginative use of private sector capabilities that would have simultaneously realized private sector and public sector objectives.

2) We conclude, that the airport devolution policy initially established by the government in 1987, including its specific provisions for private sector involvement in airports was appropriate, and applaud the fact that the Canadian Airport Authority policy of the current government retains this philosophy.

Fourth, our examination of the full process which led to the Pearson agreements has revealed a story of at times Byzantine complexity, displaying a normal quota of human fallibility and limitation. This does not, however, establish the existence of the sinister conspiracy imagined by the most vocal critics of the project, including Mr. Nixon.

3) We conclude, that the Senate inquiry into the process and the agreements it produced has revealed an utterly routine course of events, consisting essentially of an arduous attempt on the part of all public officials, in good faith, to serve the interests of Canadians.

4) We conclude, that the negative impact of the cancellation of the Pearson contracts has created a dismal ledger: no redevelopment of Terminals 1 and 2, jobs

Chapter VII - Findings, Conclusions and Recommendations

either lost or not created, legal proceedings commenced against the Crown, lost opportunity for public and private sector cooperation and lost revenues to the Crown. The decision to cancel has achieved nothing positive for Canadians. It reflects an unacceptable lapse in judgement by the Government of Canada prompted by immediate political gain and has caused negative long term economic and social consequences.

We recommend that the detailed story of the Pearson Airport agreements be put to constructive use, within the Department of Transport and the Public Service and, more broadly, by students of public policy and business-government relations. We hope, in addition, that it can serve as a cautionary tale for politicians.

We recommend that all political decision-makers, of whatever party, recognize the essential lesson of the Pearson experience. Emotions stemming from electoral campaigns are a seriously inadequate basis for responsibly addressing the complexities of public policy-making. Furthermore, where campaign commitments are made to review major public policy decisions of a previous government, this should be done with rigorous detachment from any partisan emotions which may have precipitated the review.

SPECIAL SENATE COMMITTEE ON THE PEARSON AIRPORT AGREEMENTS

MINORITY REPORT

"What comes through to all sorts of people critical of our government is some sort of a quick pay off to friends who want to develop airports and it doesn't taste well and it doesn't sound well and it leaves all sorts of suspicions and it doesn't add up or balance."

- Don Blenkarn, Conservative Member of Parliament for Mississauga South, writing to Transport Minister Jean Corbeil, March 13, 1992

"The hard facts of the case must therefore be that [the Right Honourable Kim Campbell] chose to authorize the signing of the Pearson Airport agreements at a time when she knew that she would not be able to take responsibility for the consequences of that decision. And that looks very close to me like the work of a government which has already lost the moral authority to govern. To say that her decision was a constitutionally inappropriate exercise of power is, in my view, to put it mildly, but in the context of our customs and those of other parliamentary systems it, in my view, is also enough to justify whatever steps have to be taken to terminate the agreement."

- Professor John Wilson, professor of political science at the University of Waterloo, testifying before the Special Senate Committee on the Pearson Airport Agreements, September 25, 1995.

I. Introduction

On May 4, 1995, the Special Senate Committee on the Pearson Airport Agreements was formed with the following mandate:

"That a special committee of the Senate be appointed to examine and report upon all matters concerning the policies and negotiations leading up to, and including, the agreements respecting the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport and the circumstances relating to the cancellation thereof." [*Minutes of Proceedings of the Senate*, May 4, 1995, 1590-92]

To fulfill this mandate, the Committee heard testimony from over 65 witnesses, and reviewed thousands of pages of documents. This testimony, and especially the evidence of the contemporaneous documents, demonstrated conclusively that the Pearson Airport deal was not in the best interests of the country, both in its substantive terms and because of the process by which it was brought into being.

From its inception, the redevelopment of Terminals 1 and 2 at Pearson Airport was driven by private developers, and in particular by Paxport Inc., a consortium headed by Mr. Don Matthews and his son, Mr. Jack Matthews.¹ Neither Don Matthews nor his son had any experience in developing or operating airports. Mr. Jack Matthews openly admitted that the first question people would ask him in meetings was, "Jack, what business do you have in the airport business?" And the only answer he could give was to point to his unsuccessful attempt to win the Terminal 3 contracts.²

Messrs. Matthews hired Mr. Ray Hession, a former high-ranking public servant, to serve as President of Paxport. In what no doubt will become a model case-study on lobbying for courses on business-government relations, Mr. Hession undertook first to persuade the political, business and public service communities of the need for immediate redevelopment of Terminals 1 and 2, and then to present Paxport as the best solution.

Mr. Hession was successful; Paxport's proposal was selected by the Government for the redevelopment project, even though it was known, right up to the Prime Minister, that Paxport could very well discover in "a matter of weeks ... that their proposal is not workable

¹ Several witnesses spoke eloquently of the serious problems at Pearson. However, there was no evidence of any need or desire to address those problems outside the general Government policy of using Local Airport Authorities to develop and to operate airports, until after Mr. Hession's campaign to demonstrate the pressing need was launched.

² Testimony of Mr. Jack Matthews, *Proceedings of the Special Senate Committee on Pearson Airport Agreements*, hereinafter cited as "*Committee Transcript*," Thursday, September 21, 1995, Issue No. 22, 22:130.

under current circumstances in the airline industry."³ That is, in fact, what occurred. Paxport could not finance the project.

Within days of having had its proposal selected, and so winning the right to negotiate a contract to redevelop Terminals 1 and 2, Paxport was discussing a merger with its only competitor for the project, the Airport Terminals Development Group.⁴ This merger was finalized just five weeks later. Senator Finlay MacDonald, the Chairman of the Senate Committee on the Pearson Airport Agreements, expressed surprise at what he termed "the almost indecent short length of time between Paxport becoming a winner and a merger taking place."⁵

This inquiry into the Pearson Airport Agreements revealed to the public how Government worked under the direction of the Right Hon. Brian Mulroney. Lobbyists, to borrow the words of a journalist who sat through many of the hearings, "swarmed" over senior levels of government in their determination to win the contract for their client.⁶ The Committee learned that it was "not ... unusual" for a company like Paxport to receive debriefings from senior political staffers to Cabinet ministers on cabinet committee meetings⁷ -- and the Committee saw concrete evidence of this in a report from a lobbyist to Paxport's President that provided a "full debriefing" on a Cabinet Priorities and Planning Committee meeting.

The Committee heard how the Prime Minister of Canada, as a result of an approach made at a social function, asked the Clerk of the Privy Council, the Government's most senior public servant, to try to arrange things "so that everybody could get a piece of the action."⁸

³ Memorandum for the Prime Minister from Mr. Glen Shortliffe, Clerk of the Privy Council, dated December 4, 1992, Committee Doc. 002184.

⁴ The Airport Terminals Development Group ("ATDG"), which was Paxport's competitor at that time, was a consortium controlled by the Claridge Group, a group of companies, including Claridge Properties Ltd., Claridge Holdings Inc., and others, controlled, directly or indirectly, by Charles Bronfman. For convenience, we refer to these companies in this report as we did throughout the hearings, simply as "Claridge." (At a certain point, ATDG dropped out of the picture, so that the final merger was between Paxport and the Claridge Group.)

⁵ *Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:63.

⁶ Murray Campbell, "Pearson lobbyists had list of politicians to target: Memos indicate four firms had battle plans to gain influence," *Globe & Mail*, August 24, 1995, p. A6.

⁷ Testimony of Mr. Ray Hession, former President of Paxport Inc., *Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:83.

⁸ Testimony of Mr. Glen Shortliffe, then Clerk of the Privy Council, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:65. As will be seen, this occurred before the merger discussions began.

The Committee saw internal Paxport memoranda discussing whether it would be "smart strategy" to have the Prime Minister "push/order" the Hon. Douglas Lewis, then Minister of Transport, to award the redevelopment contract to Paxport unilaterally, without a competition. The Committee heard testimony of \$2.4 million contracts to a lobbyist who was a former senior member of Mr. Mulroney's staff -- contracts which were contingent on this deal going through. The Committee heard testimony of lobbying campaigns that "targeted" high-ranking members of Cabinet, their political staff, officials within the Department of Transport, Members of Parliament, officials in the Privy Council Office and in the Prime Minister's Office. And the Committee saw internal government memoranda that predate the announcement of the winner of the Request for Proposal competition, commenting, "This may be a done deal."⁹

The Committee saw documents evidencing the numerous side deals and non-arms length contracts by which the developers were going to enrich themselves out of Pearson Airport, beyond their profits out of the already rich (23.6% rate of return) redevelopment deal. These documents included a contract to pay \$3.5 million over 10 years to a Matthews Group company, labelled as a "consulting fee" but with no mention of any services, consulting or otherwise, to be provided. The Committee saw a \$3.15 million contract to the parent of another consortium member, to serve as a "consultant" in the management, operation, development and re-development of Terminals 1 and 2. The Committee saw evidence of a \$4 million contract to yet another Matthews Group company, as a promotion fee to try to win other airport development contracts for the consortium internationally. Despite being completely unrelated to Pearson Airport, the money would apparently have been paid from Pearson revenue, somehow as part of the cost of operating the Pearson terminals.

The Committee saw evidence of construction management contracts, architectural and engineering service contracts, and other management contracts, to name just a few -- all adding up to millions of dollars in extra revenue for the T1T2 consortium members. The Committee also saw Government documents that struggled to piece together these contracts, match them to the proper contracting parties, and locate them within the complex web of each consortium member's corporate structure. One such document was aptly entitled, "The Matthews Enigma."¹⁰

The Government gave away any real right to oversee or to limit this self-dealing. It also gave away any real ability to complain if the consortium was not living up to its side of

⁹ Interoffice Memorandum from Mr. Bill Cleevly to six Treasury Board officials, dated November 26, 1992, Committee Doc. 001267.

¹⁰ Committee Doc. 001109.

the deal -- the only remedy the Government had was to step in and take over the airport, something unlikely to occur except in a case of the utmost serious breach. Thus the consortium would have had considerable leeway to bend the rules -- and the lease was for 57 years.

The evidence is clear that the project to privatize Terminals 1 and 2 was launched against the advice of Air Canada, Canadian Airlines International and the rest of the Canadian airline industry. Once launched, the Government employed a process that, it was warned, "could convey the message that the Department is not committed to a fully open and competitive process."¹¹ It was proceeded with against the advice of public servants, and in the face of concerns expressed both openly in Parliament by the Rt. Hon. Jean Chrétien, then leader of the Official Opposition, and privately in correspondence between a Conservative Member of Parliament for Mississauga (where the airport is located) and the Minister of Transport.¹² Late in the negotiations, the Terminal One air carriers sent one final plea to the Minister of Transport and to Paxport, ending: "*Who will remain in business to pay for your extravagant folly?*"¹³

The deal was negotiated by officials "working at a furious pace"¹⁴ to meet a deadline that was imposed by Prime Minister Mulroney so that the deal could be closed before he left office in June, 1993.¹⁵ Internal Government memoranda noted that this pressure for speed in the negotiations gave the consortium "an upper hand in negotiations."¹⁶ Ultimately, the deadline could not be met. The agreements were finally signed in a tumult of public controversy, in the middle of the election campaign, and at the express direction of the Prime Minister, the Rt. Hon. Kim Campbell, acting with what one witness characterized as an unprecedented "reckless disregard for propriety."¹⁷

¹¹ Memorandum dated October 29, 1991 from Mr. Chern Heed, general manager of Pearson Airport, to Mr. Victor Barbeau, quoting comment by Price Waterhouse, Committee Doc. 000639.

¹² Letter from Mr. Don Blenkarn, Member of Parliament for Mississauga South, to the Hon. Jean Corbeil, Minister of Transport, dated March 13, 1992, Committee Doc. 000996.

¹³ Letter from Ms. Carole Pitre, Chairperson, Airline Operators Committee - Terminal One Sub-Committee, to Paxport Inc. dated June 29, 1993, Committee Doc. 001088, italics in original document.

¹⁴ Memorandum from Mr. Robert Fonberg to Mr. Michael Francino, Department of Finance, dated May 17, 1993, Committee Doc. 002072.

¹⁵ Testimony of Mr. Glen Shortliffe, former Clerk of the Privy Council, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:74.

¹⁶ Memorandum from Mr. Robert Fonberg to Mr. Michael Francino, Department of Finance, dated May 17, 1993, Committee Doc. 002072.

¹⁷ Testimony of Professor John Wilson, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:15.

The Committee heard testimony from both the Clerk of the Privy Council and a political science professor at the University of Waterloo that the Government of Canada observes a general rule to act with caution as soon as Parliament is dissolved and an election is underway.¹⁸ Under this "caretaker convention," the Canadian government accepts a "firmly restricted" freedom of decision making, a freedom confined to only routine matters of administration.¹⁹ This rule was not observed in the case of the Pearson Airport deal. The Committee was told that signing the Pearson agreements "was a constitutionally inappropriate exercise of power... [that was] enough to justify whatever steps have to be taken to terminate the agreement."²⁰

These contracts would have established a precedent dangerous to Canada's democratic process, a precedent whereby a government could conclude controversial agreements during an election campaign -- even when it is clear that Government is about to lose. These contracts would have bound the Canadian government to a 57-year lease under terms that, as a matter of responsible business management, were not in the country's best interest. Furthermore, the privatization of Canada's largest, busiest and most profitable airport was inconsistent with the stated Government public policy and the policy which was being applied at all other major airports in Canada.

Was there political manipulation? Absolute proof may be impossible to retrieve. Rules prohibiting disclosure of cabinet documents or advice to ministers, and an understandable reluctance on the part of civil servants to point fingers in public at their former political masters, or to criticize the terms of a deal they themselves negotiated, all combine to enshroud much of this already murky deal, that the Committee was unable to penetrate. But the documentation that was disclosed to the Committee reveals a degree of involvement and direction from the Prime Minister and members of his Cabinet, and their close advisors, that goes far beyond what one would anticipate in any normal commercial transaction.

For these reasons, we support the decision by the Canadian Government to cancel the Pearson Airport Agreements.

¹⁸ Testimony of Jocelyne Bourgon, *Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:57, 59; testimony of Professor John Wilson, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:13.

¹⁹ *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:9.

²⁰ *Ibid*, 24:16.

I. BACKGROUND: POLICY

The Government headed by the Right Hon. Brian Mulroney began with a clear and consistent policy toward the development of the 150 airports then run by the federal government -- which included all the major Canadian airports. Austin Douglas, retired Associate Executive Director, Airports Authority Group of Transport Canada, testified about the evolution of this policy, which began with the Mazankowski Task Force Report in 1986.

That Task Force, headed by the Hon. Don Mazankowski, included representatives from both the public and private sectors. It looked at four options: a private sector option; a Crown corporation option; a local airport authority option ("LAA"); and a Transport Canada Airports Authority Model Option, which was a more sophisticated and commercialized version of what was going on at the time. The report ranked local airport authorities first, and eliminated the private sector option altogether from the recommendations. As Mr. Douglas testified:

"[T]he report said that [the private sector option] was not necessarily the best way, [nor] the most sensitive way of dealing with all the different publics involved in deciding what was best done to stimulate local economic development and meet the interests of all the people who would be most likely to be affected by the airport." [Committee Transcript, Tuesday, July 11, 1995, Issue No. 2, 2:28-29.]

Steps were quickly taken by the Mulroney Government to implement this policy. In the spring of 1987, the Government issued a paper entitled, *A New Policy Concerning A Future Management Framework for Airports in Canada*.²¹ As Mr. Douglas testified, that policy statement did not include the so-called private sector option as an acceptable choice, except insofar as it provided that private sector interests "should be encouraged in every way possible to participate in the actual development opportunities and operation of the airport." [Committee Transcript, Tuesday, July 11, 1995, Issue No. 2, 2: 30.] (The private sector role in the construction and operation of Terminal 3 had been contracted for before the Government had formulated its policy in 1987. See: *Committee Transcript*, Tuesday, July 11, 1995, Issue No. 2, 2: 44.)

Mr. Nick Mulder, Deputy Minister of Transport, testified that, "Out of that [1987 policy statement] came the policies, as you are all familiar with, of having local airports authorities established, of which four were negotiated in [the] early 1990s, and even attempts were made in Toronto to set up local airport authorities." (*Committee Transcript*, Tuesday, July 11, 1995, Issue No. 2, 2:15.)

²¹ This was included at Tab G of the Briefing Book prepared for Committee members by the Library of Parliament research team.

In early April 1992, agreements were signed transferring the international airports in Vancouver, Montreal, Edmonton and Calgary to local airport authorities. [See: Transport Canada Press Releases Nos. 56 - 59/92, Committee Doc. 00015.]

Mr. Glen Shortliffe -- formerly Clerk of the Privy Council (1992 - 1994) and Deputy Minister of Transport (May 1988 - October 1990) -- testified that the policy adopted for Toronto marked an exception to the policy applied elsewhere by the Mulroney Government:

"[W]as this a departure from the generally announced LAA policy that had been put out in 1987? Sure it was. Was it a deliberate policy decision by the government of the day? Yes it was. And was it taken to address what was perceived as a crisis at Pearson? Yes, it was." [*Committee Transcript*, Thursday, July 13, 1995, Issue No. 4, 4:70, emphasis added.]

The issue of the readiness of the Toronto LAA to take over Pearson has been hotly disputed in the committee proceedings. The Greater Toronto Regional Airports Authority ("GTRAA") testified that it was as ready and able, or even more ready and able, to take over Pearson as any of the other LAA's that were accepted by the Mulroney Government in the other major Canadian air travel centres. This issue will be considered below.

A different issue concerns the degree to which a crisis actually existed at Pearson, and the degree to which an alleged crisis was used as an excuse to avoid the LAA process, and to adopt an extraordinary "solution," a private sector option for Pearson.

Background: Crisis at Pearson?

Both Mr. Shortliffe and the Hon. Doug Lewis (Minister of Transport, February 1990 - April 1991) testified that a crisis did exist. Mr. Lewis claimed that virtually every day someone brought to his attention the need to "fix Pearson." [*Committee Transcript*, Thursday, July 13, 1995, Issue No. 4, 4:4-5.]

Mr. Shortliffe told much the same story, adding that: "Pearson was a mess. It was a disgrace. And worst of all, it was not working." [*Committee Transcript*, Thursday, July 13, 1995, Issue No. 4, 4:64.]

He told our Committee that in the later 1980's there was a shortage of air traffic controllers, inadequate runways, and terminals that were not up to the job of handling the projected levels of traffic in the years ahead. He described Terminal One as a "one-horse shay which had collapsed," and complained that Terminal Two "was clearly suffering from an inadequacy of gates." [*Committee Transcript*, Thursday, July 13, 1995, Issue No. 4, 4:65.]

In 1989-90 there were problems at Pearson Airport -- nobody has asserted the contrary. The controversy relates to which problems the Government decided to address, and how it proceeded to address those problems. **As will be seen, the final deal at issue in this inquiry did not address the air traffic controller situation, nor did it address the runway problem. No construction would have occurred at Terminal 1 until 1997 at the earliest. There would have been earlier construction at Terminal 2, but no new gates would have been added.**

Moreover, the situation at Pearson changed rapidly with the advent of the recession. As Mr. Gardner Church, former Deputy Minister for the Greater Toronto Area in the Ontario Government, noted, "[D]emand on the airport facilities had dropped dramatically, and the crush from '89 was no longer an issue." But the project continued, on the basis of "extraordinary" flight data that projected the future demand on the airport facilities. [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:21.]

Later, Mr. Church elaborated, explaining that the "extraordinary" flight data used as a basis for the decision to proceed with the private development of the terminals was derived from the unique growth experienced in Toronto in 1986-89 -- "the most extraordinary growth period in the history of the country and by far the most extraordinary growth period in the history of Toronto and Toronto aviation." [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:22.] In fact, the evidence was indisputable that this growth pattern has not continued.

On November 16, 1992, three weeks before the Government announced the selection of Paxport's proposal as the "Best Overall Acceptable Proposal" to redevelop the terminals, Glen Shortliffe, then Clerk of the Privy Council, wrote to Prime Minister Mulroney:

"Transport has identified a number of issues to be considered before proceeding:

- the recession is continuing longer than expected and traffic may decline due to the current airline industry situation so the need for the expanded terminal space has slipped 2 to 3 years. **There is no need to start construction until 1996;**
- it had originally been expected that construction might start next year. Transport's current estimate is now 1994 at the earliest as it will take a minimum of 12 months to negotiate the lease. Paxport will have to negotiate new leases with the carriers and other T1/T2 tenants and arrange financing before signing the lease;

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- Carriers' costs would double to \$60 million in the first year and increase by a factor of four in ten years. **Air Canada has asked that the redevelopment be postponed.**
 - a Local Airport Authority (LAA) may be established for Pearson. The five regional chairmen, led by Metro Toronto, have written to Mr. Corbeil indicating their intention to proceed with the LAA process. The LAA would assume any lease for T1/T2. **There may be pressure from the province for a postponement until the LAA can be established.** [Memorandum for the Prime Minister from Glen Shortliffe, dated November 16, 1992, Doc. 002188, emphasis added.]

It is clear from the documentation that the urgency to "fix" Pearson -- the "crisis at Pearson" -- had evaporated by the time the proposals were being assessed. Air Canada, the major tenant at Terminal 2, advocated postponing the redevelopment; the cost to the travelling public would quadruple to pay for the redevelopment; and the Government of Ontario wanted to wait until an LAA could be established at Pearson. Notwithstanding all of the above, the Government displayed a single-minded determination: pushing to completion this private sector solution to a problem that did not exist. One can only wonder whether their determination would have been as steady had the recipient been a not-for-profit local airport authority, instead of a private sector entity, whose participants stood to make millions of dollars.

The Status of the Toronto LAA

Former Transport Minister Douglas Lewis testified that the reason he did not transfer Pearson Airport to a local airport authority was that the Toronto LAA was not "a viable alternative." [*Committee Transcript*, Thursday, July 13, 1995, Issue No. 4, 4:9.]

This assessment is in marked contrast to that of the members of the Greater Toronto Regional Airport Authority who testified before the Committee. They described a process in which Mr. Lewis persisted in imposing significantly more stringent demands on them than were imposed on any of the other Canadian LAAs. Mr. Gardner Church testified:

"The federal government required support from the municipalities. Now in Vancouver and Montreal, they required support from a few municipalities. For reasons about which you can speculate, they required absolute unanimity twice from the Toronto community. And to get absolute unanimity from 35 municipalities on anything on any day is an heroic effort, and we undertook that effort twice successfully." [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:16.]

When asked by Senator John Bryden to cast light on why the criteria applied to the GTRAA were more onerous than those applied to other formative LAA's, Gary Harrema, Chair of the Durham Regional Council replied:

"No, sir, I cannot. We did ask. And Mr. Lewis is very firm on the matter when he indicated that we had to have decisions from all our council.... Mr. Lewis indicated to us that privatization was the way that he wished to proceed and if we wanted to get involved in it at some stage, he did not say we would be totally excluded, but he certainly was not indicating to us that we should proceed, that he would take an LAA.... We met Mr. Corbeil later on again in '92 and it was similar -- somewhat different meeting, but similar reactions." [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:18.]

In this time period, Paxport was lobbying Transport Canada to declare a three-year moratorium on the formation of new LAAs. When the Greater Toronto Area Airport Study Committee recommended that, "No action be taken with respect to further privatization of Terminals at Lester B. Pearson International Airport ... so that our task force may discuss privatization in context with the creation of a local airport body," the President of Paxport complained to Dr. Huguette Labelle, Deputy Minister of Transport, that this was "local obstruction," and that, "It is difficult to imagine the municipal and local interests of the GTA putting the national interest ahead of their own parochial needs." [See: Letter dated November 26, 1990 from Mr. Ray Hession to Dr. Huguette Labelle, Committee Doc. 001181; and see, Corporate Report from Mayor Hazel McCallion (Mayor of Mississauga) to the Chairman and Members of the Administration and Finance Committee, dated October 17, 1990, Committee Doc. 001181.]

The documents seen by the Committee support the GTRAA contention that the criteria being applied to their recognition were not the same as those applied to other LAAs. A letter of May 6, 1993 from the Hon. Jean Corbeil to Gerry Meinzer, then Interim Chair, Greater Toronto Regional Airport Authority, refused Mr. Meinzer's request for official recognition and authorization to begin negotiations for the transfer of Pearson Airport to the GTRAA. [Committee Doc. 000549] In the letter, Mr. Corbeil gives as his reason "that certain Councils have qualified their endorsements to some extent."

However, a handwritten notation on the file copy of this letter, apparently written and initialled by M.E. Farquhar, Director General, Airport Transfers at Transport Canada, says:

"Notwithstanding the above observations, the Toronto LAA already would appear to meet the government's prerequisites for becoming a LAA, consistent with the criteria applied to the first four LAA's." (emphasis added)

During the hearings much was made of the issue of the Toronto Island Airport, and the fact that one region, the Region of Peel, was insisting that the Toronto Island Airport be included within the transfer to the GTRAA. However, it is clear from the evidence that this is additional evidence showing that the Toronto LAA was held to a standard different from that applied elsewhere in Canada. For example, the Government proceeded to transfer one of two airports in Edmonton to a local airport authority, leaving the other airport in the hands of the City of Edmonton. Mr. Michael Farquhar, the person within Transport Canada responsible for negotiating the transfers of airports to LAAs, testified as to the decision to proceed with the transfer, even though the LAA wanted to negotiate the transfer of both airports:

"[F]rom the authority's point of view, it probably makes more sense to take over and demonstrate your ability to operate the major airport first and foremost, rather than trying to do it all at once.... [T]he minister was very familiar with the Edmonton situation." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:50.]

Mr. Gerry Meinzer testified that Mr. Farquhar had advised the regional chairs in 1992 that they had met all the conditions for recognition. [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:46.] Mr. Farquhar himself was clear when he testified that by June, 1992 there existed in Toronto a body with whom Transport officials could discuss airport transfers. [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:79.]

On June 18, 1993, Mr. Farquhar had prepared a briefing note for the Minister, recommending that, "Even if the Regional Municipality of Peel reconfirms its former resolutions on the proposed Toronto Island Airport transfer it would still be appropriate to endorse the GTRAA in light of our recent experience in Edmonton." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:49.]

And indeed, on July 12, 1993, the Ontario Government officially recognized the Greater Toronto Regional Airports Authority "for the purpose of entering into formal airport transfer negotiations with Transport Canada." [Committee Doc. 00069] The province's preference for an LAA at Pearson Airport was clearly stated in correspondence to the federal Transport Minister, including a letter dated July 30, 1991 from the Ontario Minister of Transportation to the Hon. Jean Corbeil [Committee Doc. 000565].

It is curious that while the Minister of Transport was insisting that the GTRAA demonstrate unqualified support for its formation from all the municipalities, no similar unqualified support was ever required for the private redevelopment alternative. In fact, the unequivocal and adamant opposition of municipalities to what the Government was proposing by way of the private sector solution carried absolutely no weight. **While a**

public sector LAA required unanimous public support, the private sector solution could be pushed ahead regardless of the level of outright public opposition.

The Deputy City Clerk for the City of Toronto sent the Right Hon. Kim Campbell, then Prime Minister of Canada, a letter on October 18, 1993, advising her of a motion adopted by Toronto City Council. That motion said:

"Whereas the Government of Canada has announced that Paxport has won the bid for the privatization of Terminals 1 and 2 at Lester B. Pearson International Airport; and

...

"Whereas the Government of Canada appears to have rushed to sign a deal which appears to be not in the best interest of the citizens of Toronto; and

"Therefore be it resolved that the Government of Canada be advised of the City of Toronto's opposition to the privatization of Terminals 1 and 2 of Lester B. Pearson International Airport in the current format, and that the City request that the Government of Canada re-open and reverse its decision, permitting further consideration." [Letter to the Rt. Hon. Kim Campbell, Prime Minister of Canada, from Deputy City Clerk, City of Toronto, dated October 18, 1993, Committee Doc. 002086.]

The evidence reveals that Toronto's case was pursued in a manner contrary to the policy established by the Government for the international airports in major centres throughout Canada. What was done at Toronto was justified to us by the urgent need to "fix" Pearson, and to do so quickly: speed was imperative. However, the private option to redevelop Terminals 1 and 2 was no speedier than the LAA option.

Even more important, however, is the fact that at the time the request for proposals ("RFP") was issued by the Government, there was no urgency to "fix" Pearson. As a result of the recession, Pearson was operating very much below capacity. The Mulroney Government could have adhered to its LAA policy at Pearson, just as it did at every other major airport in the country.

But the LAA option was rejected -- not only rejected, but, as the evidence suggests, deliberately frustrated -- in order to guarantee that there would be a private sector solution to the problem. Whether that problem still existed was irrelevant.

II. BACKGROUND: TERMINAL 3 PROCESS

In considering the process by which proposals to redevelop Terminals 1 and 2 were requested and then evaluated, the Committee had the benefit of the Terminal 3 experience for comparison. In contrast to the Terminal 1 and 2 redevelopment, the decision to invite the private sector to design, build, and operate Terminal 3 was made in September 1986 -- before the adoption of the 1987 policy framework for airports, which advocated the use of LAA's. [*Committee Transcript*, Tuesday, July 11, 1995, 1995, Issue No. 2, 2:44]

In September 1986, the Minister of Transport called for "expressions of interest" from the private sector, and asked for replies by November 19, 1986, three months after the call. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:27.] Ed Warrick, retired Project General Manager, Major Crown Projects, Pearson Airports, testified that eight submissions were received in response. The RFP was issued on December 18, 1986, with a deadline of May 1, 1987, or approximately four months later. Thus, there were approximately seven months from the time of the call for expressions of interest to the time when the proposals had to be submitted. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:27.] Four proposals were received; among the proponents were the Airport Development Corporation and Falcon Star. The Matthews Group was the main component of Falcon Star. [*Ibid.*]

While not a member of the original Airport Development Corporation, the Claridge Group came in as a minority stakeholder after the contract was signed. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:30-31.] Peter Coughlin, President of Claridge Properties Ltd., was very clear as to why Claridge purchased a controlling interest in Terminal 3: "Our rationale for purchasing an interest in Terminal 3 was driven, to a large extent, by the government's announced intention to privatize Terminals 1 and 2. We did not want to operate just one piece of the pie. To us, operation of all three terminals was necessary in order to: Diversify our risk across the terminals; to produce significant operating and financial synergies; and to enhance our economic return." [*Committee Transcript*, Tuesday, September 12, 1995, Issue No. 17, 17:12.]

The proposals were evaluated during May, 1987. Mr. Warrick testified that **financeability was one of the factors addressed in the evaluation.** [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:28.] The financial viability of each proposal's proponent carried roughly 40 per cent of the total weighting in the evaluation. [*Committee Transcript*, Tuesday, July 11, 1995, Issue No. 2, 2:74.]

Mr. Warrick told the Committee that the evaluation was conducted by senior Transport Canada officials, supported by other groups within government, who could assist

with opinions on security, customs and immigration, and pre-clearance matters. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:28.]

On June 22, 1987, the Government announced the "preferred proponent," the Airport Development Corporation. Mr. Warrick testified that he was aware of adverse reactions to this selection by the unsuccessful proponents. In particular, the Matthews Group "were unhappy and voiced their displeasure" with the selection. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:28-29.]

Treasury Board approved the final lease in April, 1988, nineteen months after the call for expressions of interest. Terminal 3 opened on February 21, 1991. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:29.]

The Committee was told that the procedure used for Terminal 3 has become, in general, a model of how to conduct such public proposal calls. Al Clayton, Executive Director, Bureau of Real Property and Material at Treasury Board, testified that his office used "Terminal 3 as a model, as a good practice of how you do such -- not necessarily how you do airports, but how you do these types of public proposal calls." [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:37.]

III. THE PROCESS: TERMINALS 1 AND 2

Events Leading up to the RFP

On August 18, 1989, the Hon. Benoit Bouchard, Minister of Transport, and Ms. Shirley Martin, Minister of State for Transport, announced their Strategy for the Future of Aviation in Southern Ontario. It included an initiative to develop Pearson Airport "to its optimum capacity." [Minister's Press Release No. 98/89, August 18, 1989.] The short-term (within two years) measures to implement this strategy included "top priority for renovation plans to Terminals One and Two at Pearson International Airport which, along with new Terminal Three to be completed by mid-1990, will give the travelling public three efficient, comfortable terminal buildings." Other short-term measures included two new runways for Pearson, recruitment of air traffic controllers, and development of Hamilton Airport to accommodate flights transferred from Pearson.

As will be seen, the negotiated agreement with T1T2 Limited Partnership (the consortium that resulted from the Paxport-Claridge merger) would have made further development of Hamilton Airport -- as an alternative to Pearson -- impossible: the developers succeeded in persuading the Government to agree to a passenger diversion guarantee, by which the Government specifically undertook not to divert passengers away from Pearson until certain passenger levels at Pearson had been met.

Documentation provided to the Committee shows that even before this press release had been released, the Matthews Group, which had bid unsuccessfully on the Terminal 3 project, was positioning itself to redevelop Terminals 1 and 2 at Pearson Airport. As early as May, 1989, Mr. Ray Hession (who became President of Paxport Inc.) was meeting with Deputy Ministers and Assistant Deputy Ministers in both the Department of Finance and Transport Canada, making the case for private redevelopment of Terminals 1 and 2, and for the selection of Paxport as the "preferred developer." [See, e.g., letter from Mr. Hession to Mr. Glen Shortliffe, Deputy Minister of Transport, dated August 15, 1989, Committee Doc. Ref. 5700-1.35/P1-13, 1-1-#0157.]

It is interesting to note the criteria advocated by Paxport for evaluating developers: the magnitude of the return to the Crown is a central concern, while the financeability of the proposal, including the developer's strength, is strangely absent. Further, while "qualitative" improvement in specified service to the travelling public is emphasized, there is no mention of any criteria concerning the commensurate rise in cost to that travelling public. The evaluation criteria adopted by the Government to assess the proposals to redevelop Terminals 1 and 2 closely reflected those advocated by Paxport -- in sharp contrast to those used in the Terminal 3 proposal evaluation. [Committee Doc. Ref. 5700-1.35/P1-13, 1-1-#0157.]

In September 1989, Paxport submitted an unsolicited proposal to redevelop Terminals 1 and 2. Unsolicited proposals were later received from Canadian Airports Ltd. (which included the British Airports Authority -- a group with extensive experience in airport development and operation) and Airport Development Corporation (the developer of Terminal 3, which by this time included Claridge as a minority shareholder). On June 1, 1990, Paxport and Air Canada joined together to submit a proposal, described by Senator Jessiman as "a Paxport plan to integrate Terminals 1 and 2." [*Committee Transcript*, Tuesday, August 15, Issue No. 11, 11:48.]

Throughout this period, Paxport was making its case to Members of Parliament, Cabinet Ministers, Ministers' political staff, and public servants. To do this, Mr. Hession engaged a team of lobbyists led by William Neville and including John Legate and Hugh Riopelle. They met "with officials of the Departments of Transport, Finance, Justice, Industry and International Trade, the Treasury Board, and the Privy Council Office ... political staff at the departments of Transport, Industry and Finance, the Treasury Board, the Deputy Prime Minister's Office and the Prime Minister's Office ... [and] the ministers of the Crown, including the ministers of Transport, Finance and Industry, the Treasury Board[.]" [*Minutes of Proceedings and Evidence of the Standing Committee on Transport*, May 26, 1994, 7:8.]

The truth of this testimony is borne out by a review of Mr. Hession's daily agenda books, copies of which he provided to the Committee. The pages document numerous meetings, lunches, dinners, and golf games with Cabinet Ministers, including not only the Hon. Jean Corbeil, when he was Minister of Transport, but also the Hon. Harvie André and the Hon. Otto Jelinek; with senior members of political staffs to Cabinet Ministers, including the Hon. Doug Lewis, the Hon. Jean Corbeil, and the Hon. Don Mazankowski (both from when he was Minister of Transport and Finance Minister); and the Chiefs of Staff to the Prime Minister, including a meeting on July 22, 1991 with Mr. Norman Spector, Chief of Staff to Mr. Brian Mulroney, and a meeting on July 20, 1993 with Ms. Jodi White, Chief of Staff to Ms. Kim Campbell.

Mr. Hession also met with other individuals reputed to be close to Prime Minister Mulroney, including the Hon. Guy Charbonneau (appointed Speaker of the Senate by Mr. Mulroney in 1984), and with two close friends of Mr. Mulroney dating back to his undergraduate days, Mr. Sam Wakem and Dr. Fred Doucet. (Dr. Doucet later became a registered lobbyist for Paxport.) In addition, there are many meetings with public servants, including not only those in Transport Canada with immediate responsibility for Pearson Airport, but also individuals in the Privy Council Office, most notably Mr. Glen Shortliffe, the Clerk of the Privy Council.

This campaign continued throughout the relevant time period, from 1989 through 1993. As will be discussed below, it yielded valuable results for Paxport.

We do not object to valid attempts by Paxport or other groups to seek to influence the Government in its policy-making; our objection is to their success, that is, to the fact that members of the Government were prepared to change public policy and make new rules in response to these representations, often against the considered judgment of their public servants, against good business judgment, and against the best interests of the country.

The access available to Paxport and its lobbyists is revealed in a memorandum provided to the Committee by Mr. Hession.²² In that memorandum (dated July 12, 1990, to Mr. Don Matthews, Mr. Jack Matthews, Mr. Peter Goring and Mr. Trevor Carnahoff), Mr. Hession reported on two recent meetings of interest to Paxport. [See: Memorandum to "Mailing List," from Mr. Hession, dated July 12, 1990, Committee Doc. Ref.: 5700-1.35/P1-13, 1-3-#0272.]

The first was a meeting he had the day before with Mr. Shortliffe. Among other issues discussed were: (1) the evaluation criteria that would be applied in selecting a developer; (2) the need for an approved policy to "ensure that no foreign company will directly or indirectly manage and control the terminals" (this presumably was aimed at the anticipated competition from Canadian Airports Ltd., that included British Airports Authority as a significant part of the group); and (3) whether an approved policy was in place "that no private company will dominate the management and control of terminal facilities" (this presumably was aimed at anticipated competition from Airport Development Corporation, the developer at Terminal 3).

The second meeting described in the memorandum was between Mr. William Neville, one of the registered lobbyists acting for Paxport, and Mr. Everson, the Chief of Staff to Transport Minister Doug Lewis. Mr. Neville's report, quoted in Mr. Hession's memorandum, states that he had "a **full debriefing** yesterday (July 10) from Warren Everson re **the situation post-last week's P[riorities] and P[lanning] meeting.**" (emphasis added.)

Mr. Neville reported that the Hon. Doug Lewis, Minister of Transport, had "promised the Prime Minister he will be before Cabinet in September with specific recommendations on... an "efficient" competition process to select a developer for full-scale redevelopment of

²² Mr. Hession provided a number of documents to the Committee, ending essentially in December 1992, although he acknowledged when he testified that they were by no means all the relevant documents available. When asked about documents for the period December 1992 through March 1993, Mr. Hession replied, "Senator, there are documents that would fill half this room between that period." [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:36.] Unfortunately, although the Committee requested that those documents be produced, none was provided by Paxport or the Matthews Group.

1 and 2." Mr. Everson described his Minister as "quite nervous" about "any attempt to jump over some form of competition to a unilateral decision."

There were, according to Mr. Everson, problems in such an approach, including:

- The existence of internal analysis by MOT [Ministry of Transportation] officials advising the Minister that, in their judgement, major expansion of T1 and 2 is not required before 1997;
- A Coopers, Lybrand valuation that the current terminals are worth \$1.6 billion and that valuation should be reflected in any privatization; and
- "Heavy pressure" from the other potential bidders, including increasing threats by BAA [British Airport Authority] partners Bitove and Cogan that they might well launch legal action if they are denied a fair opportunity to compete.²³

Mr. Neville reported:

"Back on the central issue, it is clear at this point that **Lewis of his own accord is not prepared to move unilaterally to award development to PAXPORT/Air Canada. He will have to be pushed/ordered** -- which, I guess, begs the question whether that is smart strategy even if it is doable. I have my doubts." [Memorandum to "Mailing List," from Mr. Hession, dated July 12, 1990, Committee Doc. Ref.: 5700-1.35/P1-13, 1-3-#0272, emphasis added.]

When he testified about this memorandum, Mr. Hession was clear that in his understanding, only one person is in a position to "push/order" a Cabinet Minister to do anything:

²³ As will be seen, arguably British Airports Authority was "denied a fair opportunity to compete," as the Request for Proposals was drafted to exclude foreign-controlled proponents. The Committee does not know why Mr. Bitove and Mr. Cogan decided not to pursue their threats of legal action. Mr. Jack Matthews clarified that Mr. Bitove was Mr. John Bitove Senior, who "operated and operates now...the food concessions at maybe all three terminals." Mr. Cogan was Edward Cogan, a real estate broker and developer. [Testimony of Mr. Jack Matthews, *Committee Transcript*, Thursday, September 21, 1995, Issue No. 22, 22:115-116.] It has recently come to light that Prime Minister Brian Mulroney intervened with active -- and, as the Court found, "extraordinary" -- steps to assist Mr. Bitove with the food concession contract at Pearson Airport, in 1989. [*Canada (Attorney-General) v. Bitove*, [1995] O.J. No. 2627, Court File No. B31/94A, decision of Lederman, J.] And Mr. Cogan was one of two directors of Sagegate Corporation, a company that would have benefited from \$2 million contracts awarded Dr. Fred Doucet (a former senior member of the staff, and long time friend, of Mr. Mulroney), which contracts were contingent on Paxport obtaining the Pearson deal. [See: Testimony of Mr. Jack Matthews, *supra*, 22:122.]

Senator Bryden: [Y]ou have been a long-term civil servant, you are perhaps one of the most knowledgeable people "on the Hill." In our system, cabinet system, who is in a position to either push or order a cabinet minister?

Mr. Hession: There's only one person who could do that.

Senator Bryden: Who's that?

Mr. Hession: That's the Prime Minister.

Senator Bryden: That would be Brian Mulroney, at this time?

Mr. Hession: Yes. [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:87.]

Mr. Hession concluded this memorandum, noting that concerns about

"foreign interests achieving control of terminal management at Pearson; [and] the undesirability of monopolistic dominance of terminal operations by ADC ... **could sway the cabinet to proceed with direct negotiation or accept a competitive process highly favourable to our cause.**

"We must, therefore, maintain the intensity of our efforts and, I believe, broaden their scope to include full cabinet and caucus." [Memorandum to "Mailing List," from Mr. Hession, dated July 12, 1990, Committee Doc. Ref.: 5700-1.35/P1-13, 1-3-#0272.]

Mr. Hession's memorandum discloses the role of lobbyists in this project, the role of ministers' political staff in assisting Paxport, the dynamics within Cabinet, the apparently preferred position of Paxport, as well as the substantive issues in the redevelopment project itself. The memorandum shows that Transport Minister Lewis' Chief of Staff had information that there was no urgency about the redevelopment project, and that major expansion of the terminals was not required for another seven years. In a letter to the Editor of the *Globe & Mail* dated September 22, 1995, Mr. Everson confirmed having had this meeting with Mr. Neville, and stated, "Naturally Mr. Lewis was aware of these meetings and authorized them."

On October 17, 1990, Transport Minister Doug Lewis announced his intention to invite competitive proposals to develop Terminals 1 and 2. [Press Release No. 198/90, dated October 17, 1990.] At that time, an environmental assessment and review panel was considering a proposal by Transport Canada to add new runways at Pearson. Minister Lewis made it clear in meetings with Paxport, Airport Development Corporation, and Canadian

Airports Ltd. that the terminal proposal would not be rushed at the expense of the environmental review.

The RFP was not issued until March 16, 1992, that is, seventeen months after this announcement. When asked about this delay, Mr. Barbeau told the Committee that:

"There were a lot of things going on.... [T]here was a whole lot of discussion going on, as I pointed out before, I mean, all over the place, and other things were happening.

"Certainly what was happening in the later part of that period is that the traffic at Pearson had begun to slow down. There were signs of the economy really taking a dive and the traffic was slowing down." [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:93.]

Throughout those seventeen months, Paxport was urging the Government to adopt the developer selection process best suited to Paxport's success -- in particular, Paxport advocated a "contract definition" approach. As explained by Mr. Hession in a letter to Huguette Labelle, then Deputy Minister of Transport:

"Contract definition - This option involves a three-stage process wherein the developer is chosen by the government on the basis of non-financial (price) considerations in the 60-90 day first (contractor qualification) stage. The process then results in a negotiated agreement based on a development contract proposed by the developer at the end of the 90-120 day second (contract definition) stage. The third (implementation) stage would commence at a time negotiated in the development agreement. This option has the political advantage of objective selection in stage one and the achievement of a negotiated balance as between the government, air carrier and private developer interests in stage two." [See: Letter from Mr. Hession to Dr. Labelle dated December 7, 1990, and attachment.]

Mr. Hession pointed out that this approach was one of three. Another option was a competitive proposal call; he rejected this as taking too much time. He also noted that, "The option has the political advantage of appearing completely objective although, typically, there is little or no practical political discretion in the decision-making." The final option was a negotiated agreement between the Government, air carriers and the private developer. While this option was the fastest, Mr. Hession recommended against it; he noted it "has the disadvantage of appearing to be subjective and politicized."

In addition to avoiding competition, it is notable that Paxport's preferred approach minimized any need for the developer to demonstrate financeability; when officials pressed Mr. Hession with their concerns regarding financial selection criteria, he replied by saying:

"The contract definition approach envisages a selection process based on both non-financial and financial criteria. Of course, the government must secure an advantageous financial arrangement and therefore include financial criteria as part of the basis for competitive selection." [See: Letter from Mr. Hession to Dr. Labelle, dated January 18, 1991.]

Thus, from inception, Paxport lobbied to assure that any financial criteria requirement would relate to the "return to the Crown" issue, not to the ability of the developer to finance the proposal.

Paxport also lobbied strenuously in this period against any need to have an "Expression of Interest" or prequalification stage in the proposal process. As discussed above, the Terminal 3 project, which officials testified was viewed as a "model" of how such proposals should be handled, had entailed a two-stage process, that is, an expression-of-interest ("EOI") or prequalification phase, before the request for proposals.

Paxport's efforts to this end were particularly evident in a series of meetings held by Transport Canada officials during the week of April 15, 1991, with each of the three developers known to be interested: Paxport, Airport Development Corporation, and Canadian Airports Ltd. [See: Committee Doc. 001114] The memorandum of the meeting with Paxport notes that:

"Paxport does not see need or usefulness of an EOI stage. The Government's criteria for a competitive process is satisfied by three proposals. There is clear evidence that there are three interested competitors so there is no need to open the process any further. There is a substantive cost associated with preparing submissions for a two-stage process." [Doc. 001114]

This approach contrasted sharply with the positions of the other developers. Airport Development Corporation opposed any redevelopment of Terminals 1 and 2 at that time, arguing:

"TC's #1 priority should be runway capacity expansion.

ADC's basic position is that:

- the T1/T2 redevelopment should be deferred;
- the airline industry cannot afford a major new capital investment at this time;
- there is a surplus of capacity in T2 and T3;
- T1 should be mothballed and T1 carriers reassigned to T2 and T3." [Doc. 001114]

Canadian Airports Ltd. argued in favour of a two-stage process:

"CAL agrees with the two-stage proposal call approach, i.e. EOI & RFP.

Factors to be addressed at EOI stage:

- experience in terminal redevelopment work (only BAA and TC has that experience);
- track record in major projects/airport operations;
- experience in terminal operations, particularly with respect to safety and security matters during reconstruction." [Doc. 001114]

It is clear from the documents that Transport Canada recommended the use of a two-stage process, with an Expression of Interest stage before the Request for Proposals. [See, e.g.: "What are the various ways that a developer can be retained?", dated January 8, 1991, Committee Doc. 001063.]

Wayne Power, Director of Transition at Pearson Airport, confirmed to the Committee that "for the T1T2 project, there was a draft expression of interest prepared." [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:13; and see the draft "Call for Expressions of Interest," dated June 5, 1991, Committee Doc. 001060.] Such an expression of interest would have required "a detailed statement of the [proponent's] qualifications to undertake the project," which Mr. Power stated normally would include the experience of the developers on similar projects, including whether they had completed projects of that size or complexity before. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:13.]

Mr. Power and Mr. Gerry Berigan, now Regional Director for Airports, Atlantic Region, and formerly a senior executive in charge of the Terminal 1 and 2 redevelopment project in Ottawa, both testified that the decision to use a one-stage procedure, and to forego the expression-of-interest stage, was made by the Minister. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:9 and 6:13; and see Memorandum from L.A. McCoomb to V.W. Barbeau, dated August 21, 1991, Committee Doc. 001047, confirming Minister's "recent direction" that "there will be a single stage proposal call process, i.e. no Expression of Interest or Qualification stage."]

It is interesting to consider how Paxport would have scored under criteria such as those proposed by Canadian Airports Ltd. As the memorandum shows, Paxport had no experience in terminal redevelopment work; by their own statements, they had no track record in airport operations; and no experience in terminal operations, other than having submitted an unsuccessful proposal for Terminal 3. [See: Opening Statement of Gordon Baker, *Committee Transcript*, Wednesday, September 13, 1995, Issue No. 18, 18:5-9.]

At the very time when it was arguing that an expression-of-interest stage was unnecessary because three interested developers had been identified, Paxport was lobbying for the disqualification of the other two developers. Mr. Hession wrote Mr. Lewis repeatedly to "point out the serious pitfalls associated with the inclusion of foreign competitors in the

development of Terminals 1 and 2 at Pearson International Airport." [See: Letter from Mr. Hession to Minister Lewis dated June 19, 1990.] While directed primarily at British Airports Authority, the main party in the Canadian Airports Ltd., Mr. Hession also extended this argument to Paxport's other main competitor, Airports Development Corporation, 27% of which was then owned by Lockheed. Mr. Hession was not subtle: "Today's foreign partner becomes tomorrow's competitor." [See: Letter from Mr. Hession to Mr. Lewis, dated June 29, 1990, Committee Doc. Ref.: 5700-1.35/P1-13, 1-1-#0271, emphasis in original document.]

Paxport advocated also that the Government "promote competition between terminal operators at Pearson for the benefit of improved service at competitive prices." [See: "Questions for Consideration," dated October 15, 1990, for meeting with Transport Minister Doug Lewis, Committee Doc. Ref.: 5700-1.35/P1-13, 1-2-#0280.] In other words, Airports Development Corporation should not be considered for the contracts for Terminals 1 and 2.

Paxport was partly successful in these representations. The RFP stipulated that to qualify, a developer had to be "Canadian as determined in accordance with the *Investment Canada Act* (R.S., 1985, c. 28 (1st Supp.)) and be controlled in fact by Canadians." This may effectively have kept Canadian Airports Ltd. from submitting a proposal, but clearly did not exclude Airport Development Corporation with its U.S. minority shareholder.²⁴ Ultimately, Paxport merged with the Terminal 3 group to form Mergeco (and then T1T2 Limited Partnership)²⁵, so that it was fortunate, for Paxport, that its stand against monopoly control did not prevail.

²⁴ The Hon. Jean Corbeil, Minister of Transport, apparently was unaware of this restriction in the RFP. When he appeared before the Committee he expressed surprise that Canadian Airports did not submit a bid: "I was convinced that there were at least three bidders because Canadian Airports was in the process the whole way. They had communicated with us on a number of occasions pressing us to request the proposal. On December 23, 1991, when I received a letter stating that they were leaving Canada because the process had taken too long and no request for proposals had yet been issued, I was virtually convinced that they would reverse their decision when we issued the RFP three months later. That did not materialize and we had two bidders. I would recall that there were four bidders on T3." *Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:42-43. In fact, however, Canadian Airports may not have been able to submit a bid, because they may not have qualified under the restrictive terms of the RFP. Whether or not they would have expended the money and effort needed to put in a proposal is also unclear. During the course of Mr. Robert Nixon's review of this deal, Mr. Stephen Goudge, the lawyer who assisted Mr. Nixon, included a note to himself recording his impression after meeting interested parties: "Note: BAA thought fix was in, so did LAA." [Testimony of Stephen Goudge, *Committee Transcript*, Wednesday, September 27, 1995, Issue No. 26, 26:34.]

²⁵ The parade of different company or partnership names can be daunting. The partnership of the Claridge Group and the Matthews Group was originally named Mergeco, and was thus referred to in many documents and much of the testimony before the Committee. Eventually this name was changed to Pearson Development Corporation, or PDC. Pearson Development Corporation was to be the managing general partner for T1T2 Limited Partnership, which was the contractor with the Government for the redevelopment project.

Mr. Hession also repeatedly expressed his dismay over the delay to the process caused by the need to wait for the results of the environmental assessment review panel on the runway proposal. Mr. Lewis, as Minister of Transport, and Transport Canada officials had made a number of public statements to the effect that it was their intention to release the RFP only after the federal Environmental Assessment Review Panel issued its recommendations. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:15-16.] These statements were summed up in a May 16, 1991 memorandum written by Mr. Chern Heed, general manager of Pearson Airport:

"Clear commitments have been made to the public that no steps to expand the capacity of Pearson airport will be taken until after the results of the environmental assessment review is known." [*Committee Doc.* 001161, quoted at: *Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:16, emphasis added.]

Nevertheless, as Mr. Berigan testified, for reasons not known to him, the RFP was issued on March 16, 1992, five months before the EARP report was released on November 30, 1992. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:16.]

The Committee saw a memorandum listing the "risks associated with issuing RFP prior to runway decision." That memorandum lists as an assumption, "EOI [Expression of Interest] has prequalified developers." It then goes on to list as the risks: "public perception of EARP/credibility; reaction of Panel itself; return to Crown likely diminished." [Document entitled, "Risks Associated with Issuing RFP Prior to Runway Decision," *Committee Doc.* 001071.] **Nevertheless, the Minister directed not only that the Department proceed with the RFP without waiting for the results of the environmental assessment on the runways, but also that they forego any expression of interest, or prequalification stage.** [See: Memorandum to Mr. V.W. Barbeau from L.A. McCoomb, dated August 21, 1991, *Committee Doc.* 001047, confirming "the Minister's recent direction with respect to the redevelopment of Terminals 1 and 2."]

The findings of the environmental assessment report were, however, very relevant to this project:

"(a) There is now no likelihood that passenger aircraft movement demand will reach the levels projected in the environmental impact statement for 1996 before the year 2001 and maybe even later;

"(b) There is no serious and continuing problem of traffic congestion at Pearson at the present. The problems with congestion virtually disappeared due to an improvement in the use of runways and a decline in demand caused by the recession;

"(c) A decision on runway expansion can be deferred for two to three years without significant risk." [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:17.]

These findings were immediately reported to the Prime Minister by Mr. Glen Shortliffe. [See: Memorandum for the Prime Minister dated December 4, 1992, Committee Doc. 002085.]

Thus we see that by 1992 the "crisis" at Pearson had ended. No longer was there a need for immediate action. Moreover, the Air Transport Association of Canada, an industry association of airlines and other commercial aviation interests in Canada, testified before the Committee that they made repeated representations to the Government that the Terminal 1 and 2 redevelopment project was not needed, and not wanted by the industry; it was neither timely nor appropriate. The first such representation was made by letter to Transport Minister Corbeil, dated September 6, 1991 -- fully six months before the RFP was issued. [Committee Doc. 00036]

When he testified, Mr. Gordon Sinclair, formerly President of the Air Transport Association of Canada, elaborated on his organization's position at that time:

"You will recall that we were in the midst of a very significant recession at that point [in] time. You will also recall that there was a substantial upheaval in the aviation industry with respect to the difficulties between Air Canada and Canadian. 1991 passenger volumes at Pearson were headed for a 15 per cent decline from the previous high in 1989 and '90. The recovery from the recession was uncertain. There [was] just too much uncertainty in the circumstances to warrant any other conclusion at that point [in] time." [*Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:77.]

Two months later, on November 12, 1991, the membership of the Air Transport Association of Canada unanimously passed a resolution that said:

"BE IT HEREBY RESOLVED THAT ATAC make strong and immediate representations to the Minister of Transport and the Government of Canada to delay any consideration of redeveloping Terminal I at Toronto until the rate of recovery of passenger traffic is established and to postpone any redevelopment of Terminal II until the carriers using that Terminal identify such a requirement." [Committee Doc. 00038.]

This resolution was sent to Transport Minister Corbeil on November 29, 1991. Mr. Sinclair testified that he thought he received a reply the following May -- six months later, and two months after the RFP issued. [*Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:78.]

In the meantime, on March 5, 1992, prompted by information that the RFP was about to issue, Mr. Sinclair had sent another letter to Mr. Corbeil. That letter began:

"It has come to our attention that you will be issuing Requests for Proposals (RFP) to redevelop and operate Terminals 1 and 2 in Toronto.

"This initiative is not supported by the airline industry in Canada because it is not needed at this time. Passenger terminals are not a separate business. They are not shopping centres. They are an integral part of the service link that the consumer uses in purchasing transportation from an air carrier or a travel agent. To set up a private operator in such a monopolistic position is to inflict a major injustice on the travelling public.

"Several years ago the government followed a course of action with Terminal 3 which involved a financial package which attempted to secure the best possible financial deal for Transport Canada. The prospective bidders knew they could bid with consumers' money because, if successful, they would be in a monopoly position." [Committee Doc. 00301]

The meaning of this statement was underscored when Mr. Sinclair was before the Committee:

Mr. Sinclair: At the time that Terminal 3 was put out for bids, there was a two stage process, one which qualified certain bidders to proceed to the second stage, and there was no problem with that. The second stage was in effect the financial stage. In fact, the project was evaluated primarily on the financial return that it gave to Transport Canada and the Government of Canada.

In other words, a developer could bid a fairly large amount of money knowing then that he would be in a monopoly position with respect to the carriers that had to use that terminal in order to get whatever money he had committed as costs to Transport Canada. He would be able to get these costs back from the air carriers and the travelling public.

Senator Kirby: Which is essentially what Paxport did in its response to the RFP?

Mr. Sinclair: Exactly. That's why we disagreed again with that kind of approach which puts a private developer in a no-lose situation. **He in effect is bidding with someone else's money.** [*Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:79, emphasis added.]

Air Canada also opposed the issuance of the RFP. Mr. Dominic Fiore, retired Senior Director, Corporate Real Estate, Air Canada, told the Committee:

"Of course, 1990 was the year the recession hit the airline business in Canada and around the world like a tidal wave. Air Canada began a very difficult process of cutting costs and downsizing. We dropped marginal routes, sold aircraft, deferred all capital expenditures and began laying off thousands of employees. Phase 2 of the terminal refurbishment was also downscaled from \$250 million to \$160 million and postponed until an improvement was apparent in Air Canada's finances.

"While Air Canada was in the early stages of downsizing, the federal government announced its intention to issue a request for proposal to redevelop Terminals 1 and 2. They also requested Air Canada's input on further improvements to Terminal 2 in order to provide specifications to interested bidders.

"While we provided our phase 2 plans, we, nevertheless, asked that the government postpone the request for proposals in light of our difficult financial situation and our inability to absorb high terminal operating costs." [*Committee Transcript*, Wednesday, August 16, 1995, Issue No. 12, 12:76.]

Even Claridge Properties Ltd., which ended up as the controlling partner in T1T2 Limited Partnership, wrote on November 13, 1991 to the Hon. Gilles Loiselle, President of the Treasury Board and Minister of State (Finance), opposing the issuance of a RFP for the redevelopment of Terminals 1 and 2. [Letter from Mr. Peter Coughlin, President, Claridge Properties Ltd., to the Hon. Gilles Loiselle, dated November 13, 1991, Committee Doc. 001137.] The letter noted that in opposing the issuance of a RFP, Claridge was joined by Canadian Airlines International, Air Canada, and the Air Transport Association of Canada.

Mr. Coughlin concluded his letter with a review of the sharply reduced traffic levels at Pearson Airport: "Traffic at Pearson is currently running at 1987 levels. With the opening of the T3 satellite terminal in December 1991 and the major renovations recently completed at T2, there is adequate terminal capacity at Pearson, WITH T1 MOTHBALLED, for another 6 to 7 years." (Emphasis in original document.) He then offered:

"In addition and should everyone's predictions be horribly inaccurate, the owners of T3, **at their own cost**, would make the necessary arrangements to develop the other half of Pier B which is currently not in use. This would be done **in a matter of months, at no cost to the Government and would provide ample capacity beyond the year 2000.**" [Letter from Mr. Peter Coughlin, President, Claridge Properties Ltd., to the Hon. Gilles Loiselle, dated November 13, 1991, Committee Doc. 001137, page 4, emphasis added.]

The Conservative Member of Parliament for Mississauga South, Mr. Don Blenkarn, wrote to Transport Minister Corbeil on March 13, 1992, protesting the proposed redevelopment project at Pearson Airport. He contended first that, "on the current volume and, indeed, on projected volumes nearly to the year 2000 there is no conceivable need for

further airport terminal expansion. Indeed, unless there are new runways there is no need whatsoever for substantial terminal improvement or expansion other than regular maintenance and regular upkeep."

His letter continues:

"What comes through to all sorts of people critical of our government is some sort of a quick pay off to friends who want to develop airports and it doesn't taste well and it doesn't sound well and it leaves all sorts of suspicions and it doesn't add up or balance.

"As Terence Corcoran [of the *Globe & Mail*] ... says, "Privatization is desirable, but the framework outlined so far is much too sketchy." So sketchy in fact as to be seriously damaging to our credibility. So sketchy in fact as to be indefensible. In my view, nothing destroys political credibility more than to do something that does not have a balance in the mind of the public. The problem here is important to me and to our other members in Mississauga. Within a year or so we are going to be asked to run for re-election in Mississauga, and when things are done in our city that stretch our credibility and the credibility of the government, it just makes things very much more difficult for us.

"Dr. Horner, Mr. Chadwick and I know the close relationships that of [sic] number of the proponents of airport reorganization and their relationship with our Party and how supportive they have been in the past. In our view, the name of the game is to get elected. Overwhelming interest is to make sure that our constituents, and the country generally, are well governed and the whole proposal at this point does not balance and our detractors clearly know that." [Committee Doc. 000996]

On the other side of the House, Mr. Jean Chrétien, then Leader of the Opposition, adamantly opposed the decision to issue the RFP, and denounced the atmosphere of patronage already in evidence. He asked the Minister of Transport a question during Question Period on March 12, 1992; the Minister was careful to avoid the patronage issue in his response:

Hon. Jean Chrétien (Leader of the Opposition): The government has announced that it is rushing ahead with plans to privatize terminals 1 and 2 at Pearson airport, an airport that makes a \$100 million profit every year. The airline, the province, the regional governments say: "We do not need it".

I want to know from the Minister [of Transport] why he is going ahead with this when everyone says that it is not needed. Why does he want to give \$100 million of profit to the private sector at the expense of the government?

...

The minister has now said that developers will have 90 days to come up with proposals for taking over these terminals. Canadians should know that one company, Paxport, has a major head start. It even had a scale model of a proposed new terminal airport on display at the Rideau Club for members of Parliament two years ago. A principal in that company is Don Matthews, a former chairman of the PC Party and fund raiser for the Prime Minister in his leadership bid.

We all know that the Prime Minister likes to roll the dice. Can the minister assure us that in this case he is not loading the dice for his friends?

Hon. Jean Corbeil (Minister of Transport): Mr. Speaker, we should perhaps recall that when submissions to build terminal 3 were requested, the person that the Leader of the Opposition just referred to was one of the bidders, but he did not get the contract. Instead, the contract was awarded to friends of the Liberal Party. [*House of Commons Debates*, March 12, 1992, p. 8121-22.]

The next day, the issue was raised again in Question Period, this time by Mr. John Manley:

Mr. John Manley (Ottawa South): ... Why does the minister not remove the foul odour of political favouritism and opportunism from the timing of the announcement of this project and do what Mr. Sinclair from the airline association suggested and simply wait until 1993 when we see how the airline industry shakes down?

...
Madam Speaker, what is not clear is who is making the decisions for Transport Canada on this issue. [*House of Commons Debates*, March 13, 1992, p. 8183.]

And as he did the day before, Mr. Corbeil declined to deal with the question, except to say, "We have taken notice of [Mr. Sinclair's] objection." With respect to the questions about patronage, again the minister declined to answer. [*House of Commons Debates*, March 13, 1992, p. 8183.]

Issuance of the RFP

Despite these many representations and pleas, the Government issued the Request for Proposals on March 16, 1992. The RFP stipulated a 90-day period to respond. Documentation produced for the Committee reveals concern within Transport Canada that this period was too short. In a memorandum dated October 29, 1991, Mr. Chern Heed, general manager of Pearson Airport, wrote to Mr. Barbeau:

"We still are concerned about the perception created by the very short time period for RFP responses (90 days) vis-à-vis the integrity of the process. This concern has

been reinforced by the observations of Price Waterhouse, the consulting firm engaged to assist in preparation of the Request for Proposals. Price Waterhouse (without prompting) has commented that, notwithstanding that the Department may consider requests to extend the response time, **publication in the RFP of a 90 day response time for proposals could convey the message that the Department is not committed to a fully open and competitive process.**

"The number and complexity of the issues to which proponents must respond with mature and firm proposals **require a response period of not less than six (6) months.** Also, if any groups other than the three who have already prepared preliminary proposals become involved, a request for an extension beyond six months would not be unexpected. We hope that there will be an opportunity to reconsider the matter of the published RFP response time." [Committee Doc. 000639, emphasis added.]

Mr. Wayne Power also testified that **the 90-day response period would have acted as a constraint on new groups seeking to submit proposals.** [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:38.] Mr. Power told the Committee that the issue of the reasonableness of the 90-day period was the subject of discussion at several meetings in that period. He noted that this proposal was a more complex proposal than that for Terminal 3, although the response time allowed for the Terminal 3 RFP was four and a half months. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:17-18.] (In fact, as we have seen, Terminal 3 used a two-stage process, and the total time between the calls for expressions of interest and the due date for proposals on the RFP was seven months. [*Committee Transcript*, Wednesday, July 12, 1995, Issue No. 3, 3:27.]

In fact, Paxport had lobbied strenuously for a short response period. For example, when Mr. Hession wrote to Mr. Lewis on October 22, 1990 to discuss the forthcoming Request for Proposal, he enclosed a list of questions "intended more to focus attention on concerns peculiar to the situation." The first question was:

"In light of the unsolicited proposal activity and the notice given by the Minister's announcement on October 18, 1990, is it the department's intention to foreshorten the time for the bidders' proposal preparation and response to, say, 6-8 weeks in order to hasten the evaluation and decision process?" [See: Attachment to letter from Mr. Hession to Mr. Lewis, dated October 22, 1990, Committee Doc. Ref.: 5700-1.35/P1-13, 1-2-#0281.]

Despite the concern voiced by the independent consultants engaged by the Government to prepare the RFP that its response period was too short, the Government stuck to the 90-day deadline. Mr. Power testified that this decision was made directly by the Minister:

Mr. Power: We received direction from the minister that the response period would be 90 days. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:34.]

This testimony is confirmed by a review of the documents produced for the Committee. A memorandum of August 21, 1991 supports Transport Canada officials' understanding of "the Minister's recent direction with respect to the redevelopment of Terminals 1 and 2." It includes: (1) direction to proceed with "a single stage proposal call process, i.e. no Expression of Interest or Qualification stage;" (2) "the RFP will require that proposals be submitted 90 days from release of the RFP;" and (3) "the RFP may be released prior to completion of the EARP review of the Department's proposal to construct new runways at LBPIA." [Memorandum from L.A. McCoomb to Mr. V.W. Barbeau, dated August 21, 1991, Committee Doc. 001047, emphasis added.]

Eventually, the 90-day period was extended at the request of Claridge, for 30 days. However that extension was requested half-way into the original 90-day period. That is, other parties who may have considered entering the contest but were dissuaded by the short response time, were not helped by this extension. The extension was for a further 30 days.

Mr. Allan Crosbie, a financial advisor who assisted Mr. Nixon in his review of the Pearson Airport deal, was concerned about the "process and the rigour with which Transport Canada identified bidders; and it came through to us as not a terribly professional and sophisticated process of identifying bidders." [*Committee Transcript*, Wednesday, September 27, 1995, Issue No. 26, 26:81.] He went on to criticize the way the RFP was presented, suggesting it was not presented in a way calculated to excite interest in most potential bidders:

"[T]here is a way to present deals to enhance your interest as a seller, in this case the government was the seller, and if you look at the RFP it is a very dry document.... It is not a package that is written from the point of view of explaining to somebody why this is an attractive deal in setting forth the deal and how they are going to make some money and how they can finance it and the amount of money they can make and all the advantages. **So that the packaging [of the RFP] was not the kind of packaging that you would see if you were really trying to do a deal and maximize value and interest people in what you've got.**

....

"[S]econdly, you have got to have a very strong process to identify bidders, create bidders, approach bidders, show them how they should do the deal, help people in the consortium to get together. And, once again, I don't think that was done and that was in our mind anyway -- ... In our mind that was confirmed and was told to us by officials from Transport Canada." [*Committee Transcript*, Wednesday, September 27, 1995, Issue No. 26, 26:81-82.]

This testimony conforms with the evidence presented to the Committee: the Government was satisfied that two or three interested parties had made themselves known, and did not worry about trying to seek out others. Of course, the RFP by its terms may have disqualified one of these parties (British Airports Authority). The final result was that the other two parties merged.

The Role of an LAA Under the RFP

The RFP was ambiguous as to whether or not a LAA was qualified to respond. Mr. Gardner Church told the story:

"When the decision was made by the federal government to proceed with the call for proposals... the provincial government agreed to underwrite, if necessary, a bid that was designed to return the policy control of the airports to the public sector[.]

...

"[A]n initial effort that might have produced a credible bid was undertaken. It became obvious almost instantly that given the nature of the call for proposals, which required very detailed drawings and detailed electrical analysis as to what one would do with communications facilities, with the administration building, with a variety of other issues, that a complete proposal in that time frame would be very difficult.

"Nonetheless ... an enormous effort [was made] to make it happen. It really was not until they were informed by the federal government that their bid would not be accepted because of what they perceived as provincial involvement that they turned their material over to another group which ultimately did put a bid in on their behalf." [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:24-25.]

Mr. Meinzer stated later that "it was not clear to us, and we tried to get a clear answer, whether an airport authority was even permitted to bid. To this day, I do not know a clear answer to that question yet, whether an airport authority was in the end actually permitted to bid or not." [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:27.]

What these individuals did not know about at the time, was the lobbying effort conducted against them by Paxport. At meetings with Transport Canada officials, Mr. Hession argued that, "Municipalities and prospective Local Airport Authority (LAA) candidates should be precluded from bidding." [Memorandum from Mr. Ray Hession to Mr. Don Matthews, Mr. Jack Matthews, Mr. Lorn Sinclair and Mr. Trevor Carnahoff, dated April 16, 1991.]

Mr. Hession later reported to his employers that Transport Canada "officials affirmed that proposals from municipalities, whether alone, in groups or in joint ventures with private interests will not qualify under the forthcoming proposal call for Terminals 1 and 2."

[Memorandum from Mr. Ray Hession to Mr. Don Matthews and Mr. Jack Matthews, dated May 14, 1991.]

Paxport and the RFP

In the meantime, Paxport was preparing its response to the RFP. Mr. Hession provided the Committee with notes he had distributed for a Paxport strategy session. These give insight into Paxport's understanding of its position relative to its competitors. [See: Memorandum from Mr. Hession to Mr. Don Matthews, Mr. Jack Matthews and four others, dated March 19, 1992.]

Those notes rate Paxport's competitive assessment *vis-à-vis* the anticipated competitors. The assessment varies from "weak," "OK," to "strong." Even at this stage, Paxport itself assessed its financial position as weak; next to the criteria, "Adequacy of proposed financial arrangements to ensure completion of the development phase," Mr. Hession entered "Weak." Similarly, Paxport's "financial planning experience and financial capability" were graded as "weak;" likewise its "ability to raise equity/debt on favourable terms."

Switching Sides: Mr. Andy Pascoe

While it was preparing for the RFP, Paxport acquired a new employee, Mr. Andy Pascoe. He came to Paxport from the office of the Hon. Doug Lewis, where from March 1990 until April 1991, while Mr. Lewis was Minister of Transport, Mr. Pascoe had served as his Special Assistant, Aviation and Airports, acting "as a liaison between the Minister and Transport Canada officials on policy issues surrounding airport management and operations." He told the Committee that while at Transport Canada, he was responsible for "a wide range of files pertaining to Pearson Airport." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:37.]

The evidence shows that Mr. Pascoe, representing the Minister's office, attended meetings with each of the potential developers for Terminals 1 and 2. [Committee Doc. 001114] Mr. John Desmarais testified that "all the unsolicited proposals we were looking at were sent to the minister's office and then subsequently sent to the deputy." [*Committee Transcript*, Tuesday, August 15, 1995, Issue No. 11, 11:84.] In the circumstances, it is evident that Mr. Pascoe had access to confidential information about Paxport's competitors, possibly including information about the unsolicited proposals submitted by each, and their strengths and weaknesses as perceived by Transport Canada officials.

It is also evident that Mr. Pascoe had access to inside information about the priorities and concerns of the department with respect to the Pearson redevelopment project. All this

information could give Paxport a "competitive edge" in preparing and submitting its proposal -- to say nothing of the appearance of conflict arising from the possibility that Mr. Pascoe had not cut all ties to the Transport Minister's office and officials in the department.

Whether or not technically Mr. Pascoe's actions violated the *Conflict of Interest and Post-Employment Code for Public Office Holders* was not an issue before this Committee. **However, we have serious concerns about the fairness of a process that allows an influential insider -- the person from the Transport Minister's office who was responsible for briefing and advising the Minister on the redevelopment project -- to join one of those firms bidding for the contract.**

Evaluation of the Proposals: Setting the Criteria

At the end of the Request for Proposals stage, there were only two qualified proposals: one from Paxport Inc.; the other from Airport Terminals Development Group ("ATDG"), in which Claridge was the dominant party.²⁶ These proposals were evaluated by a committee of Transport Canada officials headed by Mr. Ron Lane. Here again, the Minister of Transport's personal attention to this file was clear. Mr. Lane told the Committee that "the evaluation committee here I know was approved by the minister.... The weighting, if you like, and the complete evaluation documentation, was presented. The minister requested to see it. It was delivered to him." [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:59.]

The Minister of Transport had in fact participated actively in setting some of the evaluation criteria. Internal Transport Canada memoranda show that the Minister personally directed that certain points be taken into account in the evaluation process:

"This is to confirm my understanding of the Minister's recent direction with respect to the redevelopment of Terminals 1 and 2:

...

- (g) Industrial benefits including Canadian content and enhanced export potential are to be included in the project evaluation. The precise weighting for this "non-airport" related factor and the method of its

²⁶ A third proposal was received, from Morrison Hershfield, but it was eliminated from consideration as it did not meet the basic requirements: Morrison Hershfield did not include the requisite \$1 million deposit. Mr. Nixon met with representatives of Morrison Hershfield in the course of his review. He was told that the firm "originally responded to the request for proposals but decided not to provide the \$1 million deposit required as a condition of being considered for the simple reason that the company was of the impression, under the realities of the situation, that their opportunity for success was remote." [Statement by Mr. Robert Nixon, *Committee Transcript*, Tuesday, September 26, Issue No. 25, 25:9.]

evaluation are to be determined in consultation with other departments prior to the commencement of the evaluation.

- (h) [ATIP deletion] Thus, a detailed "Crown Construct" terminal design and financial analysis to serve as the basis for comparing the public versus private sector alternatives will not be undertaken. Rather the value of the T1/T2 development opportunity to the Crown is to be assessed by a qualified Management Consulting firm and will serve as the basis for evaluating alternatives." [Memorandum from L.A. McCoomb to V.W. Barbeau, dated August 21, 1991, Committee Doc. 001047.]

Paxport's lobbying had paid off. It had lobbied hard to persuade the government to "use the project as the basis for the creation of a viable Canadian airport development industry to promote both domestic competition and international market development." [See: "Questions for Transport Canada" appended to letter to the Hon. Doug Lewis, Minister of Transport, from Mr. Hession dated October 22, 1990, Committee Doc. Ref: 5700-1.35/P1-13, 1-2-#0281.] As discussed earlier, Paxport had lobbied hard to have the "return to the Crown" weighted very heavily in the evaluation.

And the Minister decreed that the Government would not undertake a detailed "Crown Construct" model to be used for comparison purposes. In other words, the evaluation committee (and indeed the Government) would not be in a position to compare the proposals with an alternative whereby Transport Canada itself would undertake the redevelopment.

This was a point that puzzled us considerably during these hearings: why was there no base case study as to what would happen if Transport Canada itself effected the necessary redevelopment? The answer was buried in the documents: because the Minister of Transport ordered that no such study be undertaken.

It is clear from the documents produced for the Committee, that Transport Canada felt that the lack of such a base case study severely undermined the value of the Evaluation Report on the proposals. An internal memorandum dated November 3, 1992, observed:

"The Proponent's Proposal would imply an attractive financial return to the government if all of its assumptions and conditions were realized. However, the Evaluation Report has made no comparison of the return to the government under the Proponent's proposal with a 'business as usual' assumption under a continued government operation of the airport. A so-called government base case was not undertaken as a part of the RFP exercise....

"Without a reasonable base case, based on "common methodology and assumptions," a determination cannot be made with confidence on whether the

Proponent's proposal would leave the government no worse-off financially than it otherwise would have been had it continued to operate the terminals."

["Considerations Related to the Potential Redevelopment of Terminals I and II," dated November 3, 1991, Committee Doc. 001445, emphasis added.]

Mr. Lane elaborated on the weightings given during the evaluation, testifying that the qualifications of each proponent was only 5 per cent of the weighting. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:60.]

Accordingly, the financial qualifications of each proponent -- their ability to deliver on their proposal -- was barely considered in the evaluation process. Ultimately, this proved to be a fatal error: those who made the preferred proposal were not financially competent to deliver what they had proposed.

At the same time, the return to the Crown under each proposal was weighted very heavily; of the 40 per cent points assigned to the business plan, 50.6 per cent was allocated to the proposed return to the Crown. [See: "Proposal Evaluation Report," Committee Doc. 001765.]

Evaluation of the Proposals: The Report

The Evaluation Report noted that Airport Terminals Development Group (or Claridge) "has submitted a sound, conservative and achievable Business Plan, which recognizes the current financial realities of the airline industry in establishing a pricing strategy (low charges for the short-term, 1 - 8 years or so, rising only after Phase 1 construction is completed in 1998)." [Committee Doc. 001765, p. 90]

By contrast, Paxport "has ... chosen a far more generous approach to determining payments to the Crown, resulting in a very high return to the Crown. However, the critical assumption in the Business Plan is that a large portion of the capital costs as well as the payments to the Crown can be passed on to the airlines, and that it will be possible to renegotiate airline leases to conform to their pricing strategies and levels." [Committee Doc. 001765, p. 90]

The Report noted that, "Any of these matters could result in [Paxport] having to scale down the scope of the project or to delay redevelopment, particularly Stage 1. They could also cause reductions in payments to the Crown, as well as bring into question the financial viability of the proposal." [Committee Doc. 001765, p. 90]

The Report also recognized that the Paxport proposal would entail significant cost increases for the air carriers -- costs that the air carriers would then pass on to the travelling public:

"The major share of capital costs and increased operating costs (including payments to the Crown) due to terminal expansion will be allocated to air carriers. The PAXPORT revenue projections indicate that these costs will double from approximately \$30M to \$60M in the first year of the lease and increase by a factor of 4 during the first ten years of the lease...While recognizing the development must recover its costs and provide a reasonable return to the investors, both the amount and rapidity of increases to air carrier costs could be criticized by both domestic and international air carriers." [Committee Doc. 001765, p. 108-9.]

What emerges is that even as the Evaluation Report was being written, Transport officials saw potential problems in the Paxport proposal. That proposal was based on the assumption that the developer's costs, including the high return to the Crown that won the proposal's selection, could be passed through to air carriers, who in turn would pass them on to the travelling public. Thus, the travelling public would be subsidizing both the Crown's return and the costs -- and profits -- of the developer. It is notable that the Evaluation Committee were explicit in their Report that "any of these matters could ... cause reductions in payments to the Crown, as well as bring into question the financial viability of the proposal."

Nevertheless, the Evaluation Committee, adhering to the criteria, found the Paxport proposal the "best overall acceptable proposal." It also found the Claridge proposal acceptable. As became apparent under questioning, the likely impact of the proposals on the travelling public was not taken into account in the evaluation process. [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:72.]

Evaluation of the Evaluation Report:

(1) Raymond, Chabot, Martin & Paré "Process" Audit

The Evaluation Committee report was subjected to an independent audit by an outside firm, Raymond, Chabot, Martin & Paré. However, it emerged from the testimony that these auditors were given a very restricted role. Mr. Robert L'Abbé, the author of the Raymond, Chabot report, was very clear when he testified: "We did not make any evaluation whatsoever.... [T]he only thing that we did is to see that every question was answered and that the methodology that was first prepared before the committee took over to make the evaluation has been followed..." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:56.]

Thus, while two levels of "auditors" were imposed on the Terminal 1 and 2 process -- the Raymond, Chabot firm and the Price, Waterhouse one, which guarded the documents -- neither level of "auditors" was empowered to question the validity of the process which the Government had put in place. They simply enforced the letter of the process they were given.

(2) Financial Assessment: The Edlund Report

Mr. Harry Swain, Deputy Minister of Industry, Trade and Technology, told the Committee that in the fall of 1992 "my then minister, **the Honourable Michael Wilson, became concerned about the negotiations over Pearson. Specifically, he was concerned with the financial competence of the bidders to perform on the long-term obligations being contemplated**, and he asked me for information and advice." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:5, emphasis added.]

Mr. Swain told the Committee that he discussed the matter with the Deputy Minister of Transport, Dr. Huguette Labelle, who agreed to allow two Industry Canada experts to have access to the records. Ms. Connie Edlund, C.A., Acting Director, Small Business Loans Administration, Industry Canada, undertook the job in October, 1992. She testified as to her conclusions:

"Basically, our findings were as follows: **In terms of financial soundness, we felt that the ATDG proposal was preferable. Our concerns with the Paxport proposal were numerous.** One of them was that the amount of equity in the Paxport proposal appeared insufficient and was significantly less than that proposed by ATDG.

"Furthermore, over \$39 million of the equity was to come from public offering in 1996, which may or may not have been feasible. They had forecasted that dividends of 10 per cent payable to the shareholders were forecasted to start immediately. A large portion, I think 16 per cent, of the capital costs were to be financed from internally generated cash flows from operations.

"The forecast revenues appeared overly optimistic. If circumstances did not unfold as forecasted, for example, in the event of capital cost overruns, failure of the public offering, operating cash shortfalls or something of this sort, we did not feel that the shareholders, particularly Matthews Group, the largest shareholder, would have the necessary financial resources to make up the difference. We felt that Paxport's forecasted management fees seemed very high." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:6-7, emphasis added.]

Ms. Edlund subsequently elaborated on the management fees issue: "I think it goes without saying they seem to be very, very high, extremely high." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:23.] She said:

"Well, the management fees, this is one that kind of got us a little bit. Because we started looking at it, and I believe in one of the schedules that support it, it actually shows the definite increase. In fact, I think if you look to the second last page of the report, it talks about the escalation in management fees that would be paid, and it increases substantially.

"We saw through the ATDG proposal it increased approximately 15 per cent being charged across the board, which seemed somewhat reasonable to us. However, we increased on Paxport the management fees as total rose from 1993 at 24 per cent to 1998 to 42 per cent and staying constant at 42 per cent. We felt that was quite high. So we made note of that.

"So we brought that up basically as a question, because certainly that combined with the dividends being paid out at 10 per cent and 42 per cent management fees, when you have a somewhat fragile situation concerning revenue projections and little bit of equity, we felt that on a financial basis that led us to be somewhat nervous." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:10.]

The Edlund report observed that, "If Paxport's cash flows are generated at the rates it is forecasting, then these high levels of management fees will be of no concern. When taken with the shareholders' high dividend demands, however, they are, perhaps, an indication of rapacity." [*Committee Doc. 002108*, p. 4.]

Ms. Edlund observed in her testimony that Paxport lacked extensive experience in the airport development area -- her report noted that Paxport was "a company with few tangible assets and no real operations" -- which in her experience was a factor worthy of consideration. [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:17-18.]

When he testified before the Committee, **Mr. Jack Matthews acknowledged that he lacked any experience in operating or redeveloping airports. His only exposure to airports came from preparing the proposal for Terminal 3.** He told the Committee that most of the meetings he attended to lobby for support of Paxport's proposal would begin with people asking, "Jack, what business do you have in the airport business?" And his only response was to point to his unsuccessful attempt to win the Terminal 3 contract. [Testimony of Mr. Jack Matthews, *Committee Transcript*, Thursday, September 21, 1995, Issue No. 22, 22:130.]

Ms. Edlund's report also reviewed the financial state of the various proponents. With respect to the Matthews Group, it noted that "Since its inception in 1953 the company has

never reported an annual loss, but in the past two years it has barely broken even and at Dec. 31/91 its debt (current plus term) totalled nearly \$250 million." [Committee Doc. 002108, emphasis in original document.]

Ms. Edlund elaborated upon this point to the Committee: "We felt that [Matthews] were pretty tenuous at that point and time.... Basically, we are a little concerned too because given the economic situation at that point and time, we didn't see an awful lot of huge upturn in sort of the business that they were in, so that led us to be a little concerned, and obviously that is borne out to be true." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:18.]

Ms. Edlund's concerns were well founded. The Matthews Group was petitioned into bankruptcy on February 9, 1994.²⁷

Ms. Edlund's report noted also that the Paxport proposal was demanding an "exclusivity" clause, "that guarantees [Paxport] that there will be no diversion of aircraft to other airports unless Lester B. Pearson International is maintained at full capacity. We did not see a similar demand in the ATDG proposal. We have no way of knowing if such a clause is reasonable or acceptable to Transport Canada." [Committee Doc. 002108, p. 4]

Ms. Edlund expressed her concern that while guaranteeing Paxport's revenue streams, this would create "a monopoly situation." [*Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:13.] It also would have made it impossible to develop the Mount Hope Airport in Hamilton -- a goal identified in the 1989 Government Strategy for the Future of Aviation in Southern Ontario, pursuant to which the Terminal 1 and 2 redevelopment project had been initiated. [Minister's Press Release No. 98/89, August 18, 1989.]

²⁷ While some people have suggested that the bankruptcy was a direct result of the cancellation of the Pearson Airport deal, this is far from clear. Representatives of the consortium pointed out frequently that there would not have been any cash flow accruing to the Matthews Group between October 1993 and February 1994. (Mr. Peter Coughlin: "[O]ver the first nine years of the lease...the partners of Pearson Development Corporation would have received no cash whatsoever." *Committee Transcript*, Tuesday, September 12, 1995, Issue No. 17, 17:15.)

(3) Financial Assessment: The Gauvin Report

In mid-November, 1992, the Deputy Minister of Transport received yet another study on the Paxport proposal, this one from Mr. Paul Gauvin, Assistant Deputy Minister, Finance and Administration at Transport Canada. This study was "an estimate of the financial implications, for the Crown, of redevelopment and continued operation of T1 and T2 by Transport Canada," compared to "the impact of accepting the offer made by Paxport." [Letter from Mr. Paul Gauvin to Dr. Labelle, dated November 13, 1992, Committee Doc. 001520.]

Mr. Gauvin summarized the conclusions of this study by saying that:

"[T]he Paxport proposal, as it now stands, would certainly leave the Crown better off financially, **but only at a very high cost to the airlines and travelling public.**" [Letter from Mr. Paul Gauvin to Dr. Huguette Labelle, dated November 13, 1992, Committee Doc. 001520, emphasis added.]

Notwithstanding all the concerns raised both internally and externally, the Government accepted the Paxport proposal. And indeed, an internal Treasury Board memorandum from this period observed cryptically: "This may be a done deal." [Interoffice Memorandum from Bill Clevely to six Treasury Board officials, dated November 26, 1992, Committee Doc. 001267.]

The Announcement, December 7, 1992: Selection of the Paxport Proposal

The first evidence before the Committee of direct involvement by Prime Minister Brian Mulroney in this project is a memorandum to him from the Clerk of the Privy Council, Mr. Glen Shortliffe. That memorandum, dated November 16, 1992, reported on the status of the RFP process at that time, **three weeks before the announcement of the selection of the Paxport proposal.** Mr. Shortliffe wrote to the Prime Minister:

"Transport has identified a number of issues to be considered before proceeding:

- the recession is continuing longer than expected and traffic may decline due to the current airline industry situation so the need for the expanded terminal space has slipped 2 to 3 years. There is no need to start construction until 1996.
- it had originally been expected that construction might start next year. Transport's current estimate is now 1994 at the earliest as it will take a minimum of 12 months to negotiate the lease. Paxport will have to

negotiate new leases with the carriers and other T1/T2 tenants and arrange financing before signing the lease;

- Carriers' costs would double to \$60 million in the first year and increase by a factor of four in ten years. Air Canada has asked that the redevelopment be postponed.
- a Local Airport Authority (LAA) may be established for Pearson. The five regional chairmen, led by Metro Toronto, have written to Mr. Corbeil indicating their intention to proceed with the LAA process. The LAA would assume any lease for T1/T2. There may be pressure from the province for a postponement until the LAA can be established.

"The successful developer, Paxport, has made an unsolicited proposal for an early start of the project. For an unspecified nominal payment, it would be assigned the \$20 to \$30 million in rent from existing concessionnaires for 40 years in exchange for \$150 million in work which would start next year. **There is concern with the inequity of the arrangement (over \$1.0 billion in revenue in exchange for only \$150 million in work) and the negative impact it would have on government revenues (the lost \$20 to \$30 million in annual revenue would affect the deficit).** As well, access to the concession revenue represents the main incentive to complete the development. With immediate access, **Paxport will have little incentive to complete the project on terms acceptable to the federal government.**" [Memorandum for the Prime Minister from Glen Shortliffe, dated November 16, 1992, Doc. 002188.]

At the bottom of the November 16, 1992 memorandum to the Prime Minister is a handwritten note which reads:

"Prime Minister: As the material indicates, there are few incentives for the bidders to get together. As discussed last Thursday, I'm looking at bid compensation."

So we see that that three weeks **before** the Minister of Transport announced that Paxport's proposal had been selected for the project, the Prime Minister was aware that no construction was required for four more years; that air carriers' costs would quadruple under the terms of the proposal; that Air Canada had requested that the project be postponed; that the province wanted to wait until an LAA could be established, and that was imminent; and that the arrangement was inequitable -- "over \$1.0 billion in revenue in exchange for \$150 million in work," all of which would have a "negative impact ... on government revenues" and affect the Government's deficit.

Furthermore, the Prime Minister and the Clerk were discussing the possibility of the bidders "get[ting] together" -- something that the parties testified was not contemplated by themselves until after the announcement on December 7.

Mr. Shortliffe provided the Committee with a curious explanation of his handwritten note:

"It is not infrequent for Prime Ministers to ask questions of the Clerk. This is an instance where I was responding to a question that I had been asked by Prime Minister Mulroney. It came about basically in the following fashion. Before this memorandum was prepared, the Prime Minister knew from me orally that the best overall proposal emerging from the evaluation process was indeed Paxport. He knew that because I told him that orally.

"It so happened that a couple of days before this memorandum was prepared the Prime Minister was at a social function and at that social function he encountered Charles Bronfman.... [O]f course, at that time no announcement had been made as to who had won the best overall proposal; and Mr. Bronfman, as I understand it, in the course of their social discourse, made, frankly, a pitch at the Prime Minister about the importance to Claridge of winning the bid for Pearson redevelopment.

"As a result of that discussion, the next morning when I met with the Prime Minister, **the Prime Minister asked me whether or not there was any possibility that once the announcement was out that the two could be -- would -- could come together so that everybody could get a piece of the action.**" [*Committee Transcript*, Monday, September 25, 1995, 1400-9, emphasis added.]

And several days after "the announcement was out," it came to pass that the two proponents did "come together so that everybody could get a piece of the action." The Prime Minister's hopes were realized.

The Prime Minister's involvement with this project seems at times to have exceeded that of the Minister of Transport. Mr. Corbeil told the Committee, in forceful terms, that he had "absolutely no memory, no knowledge, no indication" of a possible merger between the parties, until the merger was announced. [*Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:24.]

It was also clear from Mr. Corbeil's testimony that the Prime Minister's desire to try to provide compensation for the bidders if the redevelopment project was cancelled was addressed by the Clerk without consulting or involving the Minister of Transport. [*Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:24.]

On December 4, 1992, three days before the announcement, Mr. Shortliffe sent another memorandum to the Prime Minister. [Committee Doc. 002184] This memorandum reiterates the point that "the redevelopment of the terminals may impose a significant financial burden on the airline industry at a time when it is in financial difficulty." This memorandum also discusses Paxport's financeability problems, and in particular the possibility that Paxport would return to the Government "within a matter of weeks," saying that their proposal is not workable. Mr. Shortliffe wrote:

"There are concerns that Paxport may not be able to confirm the financing of the project as it effectively requires the consent of Air Canada, the principal T2 tenant, who is known to be opposed to the redevelopment. Hence, within a matter of weeks Paxport could very well be back to us indicating that their proposal is not workable under current circumstances in the airline industry. At that point the government would have to consider putting the whole project on hold until a later date."

At this point, Mr. Shortliffe inserted an asterisk, with the handwritten comment:

"PM: However, the government could consider other alternatives."

Mr. Shortliffe noted also in the memorandum that "ATDG would of course be arguing publicly that their proposal could have been financed."

We are compelled to ask why, in these circumstances, the Government decided to proceed with the selection of the Paxport proposal. It is clear from these memoranda that Transport officials were pointing out the general problems with proceeding at that time, and, even worse, the problems that would arise from selecting the Paxport proposal over that of ATDG.

It is equally clear from these memoranda that the matter was placed squarely before the Prime Minister. And yet while the Prime Minister was kept apprised by the Clerk of concerns within the Department of Transport and the fact that the government might "have to consider putting the whole project on hold until a later date," the Minister of Transport told the Committee that he never discussed delaying the project to a later date:

Senator Bryden: As of the 4th of December, as the minister responsible, had any discussion ever taken place that you would have to put the whole project on hold for a later date?

Mr. Corbeil: No, sir. [*Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:24.]

As Senator Michael Kirby observed in the course of Mr. Corbeil's testimony, "The minister was not in the loop." [*Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21: 78.] The same cannot be said for the Prime Minister.

IV. FINANCEABILITY PROBLEMS: THE EMERGENCE OF MERGECO

On December 7, 1992, Mr. Jean Corbeil, Minister of Transport, announced that the Paxport proposal was "the best overall acceptable proposal" for the redevelopment of Terminals 1 and 2. However, neither the announcement nor the letter to Paxport was unconditional in its endorsement of the proposal. Both required Paxport to "demonstrate to the satisfaction of the government by February 15, 1993 that [Paxport's] proposal, in the circumstances, is financeable." [Letter from Victor Barbeau to Ray Hession, President, Paxport Management Inc., dated December 7, 1992, Committee Doc. 001844.]

The effect of this decision was to put Paxport in a vested position. Although Paxport's ability to carry out its proposal was uncertain, the Government had announced that it was going to negotiate a deal with Paxport and with no one else. At the same time, Claridge would have to go to Paxport unless it was to forego the benefits of having all three terminals operated by it or by a friendly company -- which Claridge told the Committee was its sole motivating factor in acquiring majority control of Terminal 3 in the first place.

Paxport quickly discovered that it could not raise the necessary financing. Mr. Jack Matthews told Mr. Robert Nixon "that he had gone up and down Bay Street looking for finance, that he had gone to the banks, that he had gone to the pension funds and had been unsuccessful in raising the financing that he sought." [Testimony of Mr. Robert Nixon, *Committee Transcript*, Tuesday, September 26, 1995, Issue No. 25, 25:72.]

For a few days in December 1992, things moved rapidly as the two competing bidders were getting together to form a new company, Mergeco. But how these two parties came together remains mysterious. The Committee originally heard two somewhat inconsistent versions of the origin of Mergeco. The documentation raises questions about the veracity of these accounts.

According to Mr. Ray Hession, former President of Paxport, "within two or three days of the announcement of the award," a "senior official from Transport Canada" approached Mr. Hession and suggested Paxport "should explore the synergies with the Terminal 3 owners." [Testimony of Ray Hession, *Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:46, 44.] It was evident when he testified that this was Mr. Hession's understanding of the origin of Mergeco.

When he testified, Mr. Hession refused to disclose the identity of this senior official, citing a personal pledge that forbade him to identify the person. [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:44, 46.] However, several months later he wrote to Mr. John Nelligan, legal counsel to the Committee, and said that it was Dr. Huguette Labelle, then Deputy Minister of Transport, who had made this suggestion. [Letter from Mr. Hession to Mr. Nelligan, dated November 9, 1995.]

Every Government witness acknowledged that this file was an important, high profile one for the Government, one which was being supervised very closely by the Privy Council Office, as the documents demonstrate. It strains credulity to believe that on this closely-watched file, a senior civil servant would take it upon herself to approach the only two proponents, and suggest they explore the "synergies" of merging -- unless, of course, that civil servant was directed to do so, or understood that, at least, she had the blessings of those "higher up."

Meanwhile, both Mr. Peter Coughlin, President of Claridge Properties Ltd., and Mr. Don Matthews, Chairman of the Matthews Group of companies, testified that the merger had its genesis in a telephone call from Mr. Matthews to Mr. Bronfman on "the 10th or 11th of December," in which Mr. Bronfman proposed a merger between the two companies. [*Committee Transcript*, Tuesday, September 12, 1995, Issue No. 17, 17:21.] While Mr. Hession's letter explains that this telephone call was the result of his conversation with Dr. Labelle, and that he and Mr. Matthews sat "for about an hour" discussing the merits of Dr. Labelle's suggestion, Mr. Matthews testified that he did not recall any discussion with Mr. Hession about such a conversation between Mr. Hession and a Transport official; indeed, Mr. Matthews said that he deliberately did not tell Mr. Hession about the merger discussions, because "he was not in that loop." [*Committee Transcript*, Wednesday, September 13, 1995, Issue No. 18, 18:110-11.]

This is not to suggest that Mr. Hession was being anything less than forthright with the Committee. Indeed, other Government documents strongly support his rendition of events. A document entitled, "Terminal Redevelopment Project Lester B. Pearson International Airport: Meeting Notes," describes a meeting which took place on Thursday, March 18, 1993 in the boardroom of the Deputy Minister of Transport, and which was attended by twelve Department of Transport officials including Dr. Huguette Labelle, Deputy Minister of Transport, and Mr. David Broadbent, Chief Negotiator. One of the listed "points of note" states:

"Clear indication that the joint venture is a product of the Government (PCO/politicians)." [Meeting Notes, Committee Doc. 00007.]

Of course, we already know that the Prime Minister had asked the Clerk of the Privy Council to explore just such a possibility even before the RFP results were announced. [See Memorandum to the Prime Minister from Mr. Glen Shortliffe, Clerk of the Privy Council, dated November 16, 1992, Doc. 002188.]

How the merger came about is less important than *why*: the secrecy surrounding its origins simply highlights the fact that all the parties involved were aware that something out of the ordinary was going on.

Mr. Coughlin told the Committee that Claridge only purchased a controlling interest in Terminal 3 when the Government announced its intention to privatize Terminals 1 and 2. As he expressed it, "We did not want to operate just one piece of the pie. To us, operation of all three terminals was necessary in order to diversify our risk across the terminals; to produce significant operating and financial synergies; and to enhance our economic return." [*Committee Transcript*, Tuesday, September 12, 1995, Issue No. 17, 17:12.]

The selection of Paxport's proposal by the Government gave Paxport a highly marketable right. Mr. Coughlin was very clear as to what Paxport brought to the bargaining table with Claridge: "[T]hey brought the right to negotiate 1 and 2." [*Id.*, 17:28.] He also testified that Claridge valued the right to negotiate the Terminal 1 and 2 contract at between \$20 million and \$35 million. [*Id.*, 17:30.]

Thus the mere awarding of the right to negotiate gave Paxport an asset for which it had paid nothing except the cost of lobbying and of responding to the Request for Proposals. And the results of the merger were crystal-clear: Paxport remained "in the game," and the Prime Minister's hopes were realized -- everyone got "a piece of the action."

Apparently Mr. Hession's role at Paxport changed once Paxport's proposal won the RFP process. On December 7, 1992, the company, in Mr. Hession's words, "constructively terminated" his employment. [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:15.] However, four days earlier Mr. Hession and Paxport had concluded a "post-employment package," under which Mr. Hession was to receive \$83,750 each year for the rest of his life (and if he predeceased his wife, she would then receive \$41,875 every year for the rest of her life), and a special bonus of \$120,000 on signing the Pearson redevelopment agreement with the Government. [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:15.]

This pension -- which is unquestionably generous, especially considering Mr. Hession only worked for Paxport for **four** years -- is currently the subject of litigation between Mr. Hession and Paxport, and so the Committee was unable to learn more about it

when Mr. Hession testified. However, it is clear from the Statements of Defence filed with the court that Pearson Development Corporation and T1T2 Limited Partnership believed that the money to pay this "pension" to Mr. Hession was to come from the Pearson Airport redevelopment agreement with the Government. They claimed:

"If these Defendants [Pearson Development Corporation and T1T2 Limited Partnership] were ever bound by the Contract, which is explicitly denied, the Contract became impossible to perform when the Federal Government refused to perform the Airport Contracts. **These Defendants could not redevelop, operate or manage Terminals 1 and 2 Complex. The Plaintiff could not perform services contemplated by the Contract. The Contract therefore became impossible to perform without any fault on the part of these Defendants and the Contract was thereby frustrated.** These Defendants were discharged from any obligations under the Contract." [Statement of Defence filed on behalf of Pearson Development Corporation and T1T2 Limited Partnership with the Ontario Court (General Division), Court File No. 80004/94, para. 13, emphasis added.]

What Mr. Hession viewed as a pension -- for which one does not usually provide services, since it is given in recognition of services provided in the past -- was evidently viewed by the consortium as a cost of redeveloping, operating and managing the Terminals 1 and 2 Complex. In other words, while Mr. Hession apparently had no intention of providing services at the Terminals, the consortium would have written off the pension payments as a business cost -- money skimmed off the top of revenues from Pearson, before even calculating the profits to accrue to the consortium. This was only the first of what became a stream of arrangements disclosed to the Committee, by which members of the consortium would have diverted revenues from the most profitable airport in the country to themselves, over and above the rate of return negotiated with the Government.

The Doucet Lobbying Contracts

Paxport then engaged another lobbyist, Dr. Fred Doucet. Dr. Doucet had impressive credentials: he is known to be an old and close friend of the Mr. Mulroney; he served as Mr. Mulroney's Chief of Staff when the latter was Leader of the Opposition; and then he served as the Senior Advisor when Mr. Mulroney became Prime Minister. [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:54.] Mr. Doucet registered as a lobbyist for Paxport Inc. on December 23, 1992. He testified that while his contracts with Paxport were not signed until February 1, 1993, they took effect in late December 1992. [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:69.]

There were two contracts: one with Paxport Inc., and the other with Paxport International. Together, they would have paid Dr. Doucet more than \$2 million over a ten-

year period.²⁸ As Senator Grafstein described the contracts when Dr. Doucet appeared before the Committee, "It's a ten-year fixed contract. No cut, no change, no variation, no ability of any party to change it." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:94.]

Mr. John Nelligan, Counsel to the Committee, agreed: "[T]here appears to be no provision here for amendment or cancellation within the terms specified." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:95.]

Dr. Doucet denied that he was engaged to lobby for Paxport in the contract negotiations on-going in 1993. He would only acknowledge that these \$2 million contracts were "going to be triggered at the moment that the new management team...moved...to Pearson Airport Terminals 1 and 2." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:66.]

He claimed that, "The Paxport Incorporated contract [worth \$1,044,000] was intended primarily to advise on other Canadian airport opportunities as the airports devolution program progressed over the next decade." [*Id.*, 16:58.] He elaborated: "[T]he list of Canadian airports that were targeted for devolution was 25; 25 airports in Canada. At that point, if my memory serves me right, there was only Vancouver that was officially LAA'd, as it were." [*Id.*, 16:66.]

In April 1992, however, the Government had announced the signing of LAA agreements for each of the Vancouver, Montreal, Edmonton and Calgary International Airports. [Press Releases dated April 1992, Committee Doc. 00015.] In other words, by December 1992 there were no more major Canadian airports to be devolved -- they had all already been "LAA'd," to use Dr. Doucet's term. **One is forced to wonder why, with the Conservatives at a record low in the polls, and with an election imminent, Paxport would sign a prominent Conservative lobbyist to a ten-year no-cut contract to lobby a future government -- most probably, a Liberal government -- for the devolution of airports that did not exist.**

According to Dr. Doucet, the second contract, with Paxport International, worth \$960,000, was for his anticipated assistance "in developing international markets to promote

²⁸ Dr. Doucet testified that half the fees from one of these contracts was to go to another firm, named "Sagegate Incorporated." He stated that, "Sagegate's principals had a key involvement in the redevelopment of the Pittsburgh International Airport and other international development projects." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:58.] However, a corporate search revealed only a Sagegate Corporation, an Ontario company incorporated December 29, 1992 -- the precise time Dr. Doucet's contracts with Paxport began. The only principal entered on the official records of the company is a Mr. Frank Salvati, of North York, Ontario, who when telephoned by the media declined to say anything about the activities of Sagegate.

and position Paxport's airport development technology outside Canada." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:58.]

The timing of this arrangement also is surprising. The contracts were signed at a particularly precarious point for the Matthews Group. They had successfully lobbied to have their proposal for the redevelopment project selected, only to discover they could not finance it alone and would have to relinquish at least half (it ended up being more) to their competitor. A disinterested observer might have thought this was the time the Matthews Group needed lobbying assistance more than ever. **It is passing strange that they would agree to pay over \$2 million to one of the best connected lobbyists in the country, and yet not ask him to assist on this crucial task, particularly when, as we have seen, the Doucet contracts themselves were contingent on the consummation of the Pearson deals.**

The Committee was unable to learn about the nature of Dr. Doucet's lobbying activities on behalf of Paxport. While Dr. Doucet submitted invoices documenting that he billed Paxport Inc. \$10,000 a month for lobbying services²⁹, when asked whether he met or spoke with Cabinet Ministers, Chiefs of Staff, or Mr. Shortliffe, the Clerk of the Privy Council, Dr. Doucet replied: "I have no recollection." He admitted only to meeting with the chief of staff to the Minister of Transport. [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:83.] Yet Dr. Doucet was paid \$120,000 a year.

Not Financeable: The March 2, 1993 Deloitte & Touche Report

In mid-January, 1993, the Government retained the services of Deloitte & Touche, a well-known accounting firm, "to provide advice on the financeability of the [Paxport proposal to assume responsibility for Terminals 1 and 2] project." [Deloitte & Touche Report dated March 2, 1993, Committee Doc. 00190, page 1.]

As of February 1993, the various members of the Paxport consortium had committed to contribute equity of over \$57 million; however, only \$4,426,775 had actually been

²⁹ Dr. Doucet maintained that these invoices related "to a contract which our firm had entered into on May 4, 1992 with two construction subsidiaries of Matthews Contracting Incorporated Limited, Coolsaet of Canada Limited and Construction Angkor Incorporated for assistance in the promotion of the national highways system." [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:56.] But this does not explain why the invoices were made out to "Paxport Inc." -- especially considering that, as the lawyers for Paxport and Claridge repeated to the Committee many times, the partners in the T1T2 consortium were prohibited from incurring "any liability, contingent or otherwise, of a material nature that does not relate directly or indirectly" to the operation and development of the Pearson Airport terminals. [See, Submission to the Committee from Messrs. Coughlin, Vineberg and Spencer, dated September 8, 1995.] Therefore, either Paxport Inc. was engaged in activities it should not have been involved in (if indeed they were unrelated to Pearson), or Dr. Doucet's activities for which he invoiced Paxport Inc. were indeed related to Pearson Airport. He cannot have it both ways.

advanced.³⁰ Of particular concern to Mr. Paul Stehelin, the partner at Deloitte & Touche responsible for the file, were \$20 million to be contributed by Matthews Group Limited. The documents provided to the Committee included a memorandum dated February 11, 1993 from Mr. Stehelin to his Paxport file, reporting on a telephone conversation he had had that morning with Mr. Don Matthews. Mr. Stehelin asked Mr. Matthews to clarify a statement that "[Matthews Group Limited] has made separate arrangements with one of its affiliated companies to fund \$20 million that is to be invested on the turnover date." Mr. Stehelin's memorandum vividly describes Mr. Matthews' response:

"Mr. Matthews' answer was that they had arranged the money and that's what the letter said, so there shouldn't be any problem. I indicated that we were being asked to give an opinion on the availability of these funds to Paxport at the turnover date via the Matthews Group. I stated that he should assume that we were acting in an audit capacity and therefore it was important that we be satisfied that these funds were, in fact, available.

"Mr. Matthews asked whether I was indicating that he wasn't telling the truth, I said "No, it wasn't a question of truth or not, it was just a question of satisfactory independent evidence with respect to the availability of the \$20 million."

"After a very brief discussion, I said for example, "if the Royal Bank, which had indicated that you operate an eight digit operating line, were to indicate \$20 million was available upon suitable terms being met, i.e. agreement to your proposal with the government re: Terminal 1 and 2, this would be ideal." There was no response. He took my name and telephone number and indicated that someone would get back to me." [Memorandum from Mr. Paul Stehelin to "Paxport File," dated February 11, 1993, Committee Doc. 00188.]

In fact, as the Committee discovered, Mr. Matthews knew full well where the \$20 million was coming from: on June 10, 1992 -- while it was preparing its response to the Request for Proposals -- Paxport and the Matthews Group had concluded an agreement with Allders International Canada Limited, pursuant to which Allders agreed both to put up \$15 million directly to the consortium, and to lend Paxport Investments Ltd. \$20 million. Of particular interest were the terms of that loan. If Paxport Investments Ltd. defaulted on the loan, Allders would have received its shares of Paxport -- giving Allders effective control of Terminals 1 and 2.

³⁰ It is significant, in considering the financeability of the proposal at this time, to bear in mind Paxport's oft-stated goal of beginning construction by the end of April, 1993. [See, eg, the Transport Canada memorandum, "Notes from meeting of December 15, 1992," Committee Doc. 000366, commenting that "Messrs Hession and Matthews noted that ... they were targeting on getting a shovel in the ground by April 30, 1993, but acknowledged this might be difficult."]

In a letter to Mr. Victor Barbeau, Mr. Stehelin reviewed the financial reports of the Matthews Group Limited, and observed:

"Based on the financial information provided at November 30, 1992, we are unable to determine whether Matthews Group would be in a position to fund the \$20 million were it not for its Heads of Agreement with Allders International Canada." [Letter from Mr. Stehelin to Mr. Barbeau dated February 22, 1993, Committee Doc. 00196.]

This arrangement with Allders caused significant consternation to Mr. Stehelin at the time, and to us reviewing this deal, for several reasons. First, Allders operated duty free shops, and would have had a 25-year lease to operate the duty free shops at Terminals 1 and 2. Mr. Stehelin testified he was greatly concerned at the prospect of having a major tenant control the airport.

Second, the Request for Proposals had stipulated that only those developers who were Canadian and were controlled in fact by Canadians, qualified to submit proposals. Indeed, this was a limitation hard fought for by Mr. Hession on Paxport's behalf, in his concerted efforts to prevent British Airports Authority from submitting a bid. [See: Request for Proposals, March 1992, page 35.]

Allders International Canada Limited was owned 51% by Agra Industries, a Canadian company, and 49% by Allders PLC, a British company. However, as Mr. Stehelin testified, no one knew whether in fact Allders International Canada Limited was controlled by Canadians, or whether the British company actually controlled it.³¹ [*Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:24-25.]

It is interesting to speculate what reaction the Evaluation Committee considering Paxport's proposal would have had, had it known of the Paxport-Allders agreement. As the above documents demonstrate, the Matthews Group was far from keen to disclose the terms of the agreement.

On March 2, 1993, Deloitte & Touche issued its report. **Its conclusions were unambiguous: they could not assure the Government that Paxport's project could be financed.**

³¹ And indeed, the Committee was shown Government documents that suggest the British parent company, Allders Ltd (PLC), did subsequently acquire some or all of Agra Industries' share in T1T2 Limited Partnership. See: "The Matthews Enigma," Committee Doc. 001109.

They noted that:

"When the initial Request for Proposal was issued and responses received, the expectation was that PAXPORT would be able to finance the total project outright. In our view, PAXPORT cannot finance the entire project at this time.

"This fact is inherently acknowledged in that their proposed approach is to finance the project on a "finance-as-you-go" basis through staged redevelopment." [Report of Deloitte & Touche dated March 2, 1993, Committee Doc. 00190, page 3.]

The report concluded:

"On the basis of our work to date, it appears that **the original intent of the Request for Proposals has been altered somewhat by PAXPORT to accommodate its need to finance this redevelopment on a "finance-as-you-go" basis.** The composition of the consortium has changed significantly since the receipt of the Proposal and the Department has yet to receive full and complete details of these changes; however, it appears that most of the equity for the first stage of the project would be available. While there is a high probability that the debt financing for the first stage could be placed, it is very conditional on the resolution of significant outstanding issues by PAXPORT. There are also questions regarding a number of assumptions about the role of the Crown which should be resolved.

"Until these issues, particularly those where the onus is on PAXPORT are resolved, we cannot provide assurance to the Crown that this project can be financed." [Report of Deloitte & Touche dated March 2, 1993, Committee Doc. 00190, page 6, emphasis added.]

This report caused an uproar. The next day, March 3, 1993, Paxport representatives (Mr. Ray Hession, Mr. Jack Matthews, and Mr. Peter Kozicz) met with Dr. Huguette Labelle, Deputy Minister of Transport, Mr. Keith Jolliffe, Mr. Green and Mr. Richard LeLay, Chief of Staff to the Hon. Jean Corbeil, Minister of Transport. The Transport Canada memorandum of the meeting reported statements by Mr. Hession that "TC was using the wrong people, i.e. Deloitte Touche." It continued:

- Hession presented the DM with a letter to sign (DM to PAXPORT) stating that TC officials were being directed to begin discussions on March 4.
- The DM did not accept the letter and said she never thought she would see the day when Hession was her executive assistant!! Also TC was not "going to rol[l] over," PAXPORT should talk to Deloitte Touche on Friday after which TC would seek direction on the project from the politicians." [Memorandum entitled "Telcon Between Driedger/Heed/Desmarais and Barbeau/Jolliffe," March 4, 1993, Committee Doc. 00189.]

The memorandum notes several "Other Comments on the Situation," including:

- ADM's view is that Shortliffe is trying to orchestrate something but not sure what
- Lobbyists are abuzz
- Many not-so-well-veiled threats during the meeting." [Memorandum entitled "Telcon Between Driedger/Heed/Desmarais and Barbeau/Jolliffe," March 4, 1993, Committee Doc. 00189.]

Mr. Shortliffe refused to comment to the Committee on this suggestion as to his activities. [Testimony of Mr. Glen Shortliffe, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:81-82.]

Whether thanks to the lobbyists' activities, Mr. Shortliffe's "orchestration," or other connections, this meeting and particularly Mr. Matthews' concerns, were reported to the Prime Minister with lightning speed. On March 5, 1993 Mr. Shortliffe wrote a Memorandum for the Prime Minister, in which he detailed the concerns raised by Deloitte & Touche, underscoring their conclusion that "unless these issues are resolved, we cannot provide assurance to the Crown that the project can be financed." [Memorandum for the Prime Minister from Mr. Glen Shortliffe, March 5, 1993, Committee Doc. 002191, emphasis in original document.]

Mr. Shortliffe detailed Mr. Matthews' position as presented in the March 3 meeting, including, "Mr. Matthews questioned the need to demonstrate financeability at this point. He argued that Paxport's lack of progress on financing is the federal government's fault; in not unambiguously declaring it the winner in the RFP process, the government has undermined Paxport's credibility and negotiating position with Air Canada." [Memorandum for the Prime Minister from Mr. Glen Shortliffe, March 5, 1993, Committee Doc. 002191.]

Mr. Shortliffe's information for the Prime Minister was up to date: he reported in the memorandum on a meeting Paxport had held that day, March 5, with Deloitte & Touche. He then noted, "An impasse could develop on the financeability question.... We have asked Transport to develop options in case an impasse develops."

In a separate, handwritten note at the bottom, Mr. Shortliffe added:

"Prime Minister: I've been having some conversations on this file on which I will report to you orally. GS."

When he testified, Mr. Shortliffe stated, "As I recall, I believe that handwritten note related to various discussions that were going on at the time with respect to the prospects for Mergeco." [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:68.]

And indeed, Paxport's financeability problems were resolved by the merger with Claridge, whose "deep pockets" were accepted by Deloitte & Touche in their later, August 17, 1993 report, as more than adequate assurance of financeability. [Report of Deloitte & Touche dated August 17, 1993, Committee Doc. 00098.]

The Mergeco solution would have resulted in all three terminals at Canada's busiest airport being controlled by one private entity. All Mr. Hession's arguments against such a monopoly -- presented when Paxport was seeking to ensure that it won the redevelopment project over Claridge -- suddenly had lost their cogency, and were replaced by discussions of the "synergies" of having all three terminals operated by a single entity. **Once again, consideration for the increased cost to the travelling public was conspicuously absent.**

Concerns at the Treasury Board Secretariat

The Treasury Board Secretariat was also involved at this point. Its numerous memoranda show its strong concern with the way the project was progressing. On March 12, 1993, Mr. Mel Cappe, then Deputy Secretary, Program Branch in the Treasury Board, wrote a memorandum to Mr. Ian Clark, then Secretary of the Treasury Board. (Mr. Cappe explained to the Committee that Mr. Clark's position was equivalent to that of a Deputy Minister.) The memorandum outlined the history of the proposal process, and then described how Paxport and Claridge had "entered into this 'marriage of convenience' to protect their various interests." [Memorandum from Mr. Mel Cappe to Mr. I.D. Clark dated March 12, 1993, Committee Doc. 00304.]

Mr. Cappe reviewed the Deloitte & Touche report, saying:

"The report of Deloitte & Touche ... is very clear. Paxport is non-compliant with the RFP. Subsequent meetings between Transport, Paxport and Deloitte & Touche have not resolved any of the issues raised in the report.

...

"Paxport officials (Messrs. Hession and Matthews) met with Mme. Labelle last week and expressed outrage at what they see as bureaucratic stalling.

"Paxport officials questioned the credibility of everyone, including Deloitte & Touche. They also raised their concerns that until they are declared "the developer" by Transport Canada, Air Canada would not take them seriously.

"Since last week, Paxport has increased their pressure via PMO and Ministers."
[Memorandum from Mr. Mel Cappe to Mr. I.D. Clark dated March 12, 1993,
Committee Doc. 00304.]

When he appeared before the Committee, Mr. Cappe elaborated on his statement that Paxport was "non-compliant with the RFP." He explained: "[Paxport] was non-compliant with the RFP in that the government was not able to grant the -- to do the deal, if you will, on the basis of the proposal it had before it because Deloitte & Touche had found that it was not financeable, or that the financeability was called into question." [*Committee Transcript*, Tuesday, August 22, 1995, Issue No. 14, 14:22.]

Mr. Cappe was also clear that while he had no personal knowledge of pressure having been exerted on people within the Prime Minister's Office and other Ministers, this statement "was what we understood was going to be happening," based on discussions with colleagues "in other departments, in the central agencies, and discussing the way the file was developing. And in the course of those discussions, we would have exchanged on what we understood to be happening." [*Committee Transcript*, Tuesday, August 22, 1995, Issue No. 14, 14:28.]

The memorandum proceeded to describe the "current status" of the matter:

"The Deloitte & Touche report is probably already public knowledge. Proceeding to negotiate on a sole source basis with Paxport now would be very difficult to justify." [Memorandum from Mr. Mel Cappe to Mr. I.D. Clark dated March 12, 1993, Committee Doc. 00304, emphasis in original document.]

This paragraph is perplexing: after the RFP process, why would negotiating on a sole source basis remain an issue? Mr. Cappe was enlightening in his testimony:

"[I]t was our view that [Paxport] were non-compliant as proposed. What we were doing... was the government was consulting with Paxport, insofar as Paxport was the best overall proposal, to see if they could get up over that hurdle, if you will, to become compliant and then if they were compliant, we would then get into the negotiations.

"What we were indicating here was that if there was an interest in negotiating on a sole source basis with Paxport that that would be subject to severe criticism because the other bidder was still live, as it were, by being on the table. The Airport Terminal Group [Claridge] had not withdrawn its bid at that point." [*Committee Transcript*, Tuesday, August 22, 1995, Issue No. 14, 14:30.]

In other words, Deloitte & Touche (Paxport, really -- Deloitte & Touche was merely the unfortunate messenger) had in effect placed the Government in a difficult position: by

demonstrating that Paxport could not comply with the RFP, the Government could not proceed to negotiate with Paxport while remaining true to the RFP process. The Government's position was exacerbated by Claridge, whose quiet presence, by means of its proposal (which remained "on the table" awaiting the recognition of the fact that Paxport's could not demonstrate financeability), served as a subtle check to ensure that the RFP process was upheld.

This was precisely the situation anticipated by Claridge. In a discussion in mid-December, 1992 with the Deputy Minister of Transport, Claridge was reported to have been "positive Paxport cannot finance and therefore will be observing closely and taking appropriate legal action if proposal changes." [Fax cover sheet from Mr. Michael Farquhar to Mr. Chern Heed, dated December 17, 1992, Committee Doc. 001540.]³²

In effect, the Government had four choices: (1) proceed to negotiate with Paxport, and bear the risk of a lawsuit; (2) declare that Paxport had failed to meet the financeability condition, and proceed to negotiate with Claridge as the next-best proponent; (3) bring Claridge "on side" with Paxport; or (4) wait for an LAA to be established, and proceed as with the other major Canadian airports.

This situation was succinctly expressed by the Treasury Board memorandum:

"This file is extremely messy, and in our view, it is unlikely any contract for construction could be struck within the next six months. Overall our preference would be to wait for the LAA at Pearson to be established, and for Transport to quickly transfer the responsibility for the terminal redevelopment and new runway projects (another possible problem file) to the LAA for execution. This is what is happening in Vancouver, where the LAA is currently proceeding with terminal expansion and a new runway." [Memorandum from Mr. Mel Cappe to Mr. I.D. Clark dated March 12, 1993, Committee Doc. 00304]

Trying to Merge Paxport's Proposal and Claridge's Pockets

Why did the Government go to such pains to keep Paxport in the game? The only answer offered throughout these hearings was that the Government preferred the Paxport proposal. However, as will be seen below, the final deal was far from the Paxport proposal. Indeed, this was recognized by the Government negotiators even before the "consultation"

³² Indeed, this was Claridge's original strategy as of December 7, 1992: to hope that the Government would impose sufficiently stringent financial conditions on Paxport that Paxport would fail, and the Government would turn to the next acceptable proposal, that submitted by Claridge. [See: Testimony of Mr. Harry Near, *Committee Transcript*, Wednesday, August 23, 1995, Issue No. 15, 15:99, and fax from Mr. Near to Mr. Glen Shortliffe dated December 7, 1992, 8:12 a.m., Committee Doc. 002218.]

phase ended and "negotiations" began. (Until Paxport had established financeability to the satisfaction of the Government, the parties could only "consult;" they could not begin negotiations. See, e.g., testimony of Mr. Mel Cappe, *Committee Transcript*, Tuesday, August 22, Issue No. 14, 14:41, 44-45.)

The Government's Chief Negotiator, Mr. David Broadbent, sent Mr. Shortliffe what he described as a "warning note" on March 18, 1993, before Mr. Broadbent was to have dinner with Mr. Matthews:

"A minefield could open up at Bronfman Matthews meeting because:

"1. It seems there is no way you can take Paxport substance and merge it with Claridge financing. Changes would be needed either cutting back on scope of development or raising more funds than Claridge bid envisaged. Causing modifications to merge proposals obviously impacts on integrity of RFP system which may or may not give cause for concern." [Memorandum for Mr. Glen Shortliffe from Mr. David Broadbent, dated March 18, 1993, Committee Doc. 2179.]

This was followed up with a memorandum, again to Mr. Shortliffe, after the dinner meeting. Mr. Broadbent reported:

"Abundantly clear that an \$800m development cannot be financed by \$500m Claridge deal. So either one cuts back on development or ups cash from Claridge levels (or some combination) if one wants to reduce up-front hit on airlines.

"Regarding Mergeco situation, Jack was strongly positive on current "in-bed" nature. Fears of Claridge waiting in weeds were imaginary. **He said he could easily secure change to Mergeco deal so that if Government wanted to go with Claridge offer now, two parties would be cut in 50/50.** [Memorandum to Mr. Glen Shortliffe from Mr. David Broadbent, Committee Doc. 000912, emphasis in original document.]

Thus, it was "abundantly clear" to everyone that the original plan would not work; one could not take Paxport's proposal and simply add Claridge's "deep pockets," and proceed happily. Indeed, it is evident that Mr. Matthews was happy now to offer to go along "if the Government wanted to go with Claridge offer now," since now he was assured of being "cut in 50/50."

The suggestion is strong: the only reason Paxport's proposal was proceeded with was because it gave Paxport the leverage to ensure it would be "cut in 50/50" on the deal. In fact, the final deal was very much closer to Claridge's proposal than to that of

Paxport. The Government might just as well have proceeded with Claridge, except that in that case Paxport would have been cut out.

More Voices of Opposition

The developers also succeeded in silencing opposition voiced from within Transport Canada. The Assistant Deputy Minister, Airports, Mr. Victor Barbeau, was not named as Chief Negotiator for the deal by Huguette Labelle, the Deputy Minister of Transport, at least in part because the Hon. Jean Corbeil, Minister of Transport, told her that he "had had representations by different people indicating that they perceived Mr. Barbeau as slowing down the process." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:9.] Dr. Labelle said the Minister indicated to her in discussions that "perceptions were out there" such that "it would probably not be in the best if we asked Mr. Barbeau." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:41.]

Ultimately, the representations against Mr. Barbeau became so intense that he was sent home on "gardening leave," from May 27 until early July, 1993. When he returned, while he continued as Assistant Deputy Minister, Airports, he "was not ... involved in any way with the [Terminal 1 and 2 redevelopment] file as it progressed." [Testimony of Mr. Barbeau, *Committee Transcript*, Tuesday, July 11, 1995, Issue No. 2, 2:26.]

Dr. Labelle was very clear as to the source of the representations against Mr. Barbeau: they came from "the people who were negotiating with us on the other side of the table." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:9.] These people were not shy about letting their views about Mr. Barbeau be known. Dr. Labelle testified that Mr. Glen Shortliffe "had indicated to me that ... he had had representations to the extent that Mr. Barbeau was impeding the process as well." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:38.]

Dr. Labelle was emphatic in expressing her view "that Victor Barbeau is a highly professional public servant who was working extremely hard at that time.... I did not share that view [expressed by the Minister of Transport]." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:9.] Full confidence in Mr. Barbeau's professionalism and diligence was also expressed by Dr. Labelle's successor as Deputy Minister of Transport, Mme. Jocelyne Bourgon. [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:65-66.]

None of the witnesses before the Committee in any way questioned Mr. Barbeau's motives in disagreeing with the pace and evolution of the negotiations over Terminals 1 and 2. But it was clear that because he was expressing concerns, he was viewed by the developers as an obstacle to a rapid and satisfactory resolution of the situation. Of greatest

concern is the fact that these views were heeded, and that one of the most senior officials, with extensive knowledge of the needs at Pearson Airport, was removed from the file (and for a time, from the Department) to allow the negotiations to speed to a conclusion.

Meanwhile, Treasury Board officials doggedly persisted in raising their concerns, notwithstanding that apparently they were falling upon deaf ears. On April 1, 1993, Mr. Gershberg sent a memorandum to Mr. Cappe, briefing him on what Mr. Gershberg described (again) as "an extremely messy file." The briefing was in preparation for a meeting "called by Mr. Shortliffe to review issues on the T1 and T2 file." [Memorandum from Mr. Sid Gershberg to Mr. Mel Cappe, dated April 1, 1993, Committee Doc. 00298.] Mr. Gershberg concluded his lengthy memorandum:

"The Minister of Transport has put the Department in a box in pursuing his 'preferred bidder' approach. Justice should be the one providing guidance to keep the Department out of a legal suit." [Memorandum from Mr. Sid Gershberg to Mr. Mel Cappe, dated April 1, 1993, Committee Doc. 00298, emphasis added.]

Treasury Board memoranda from this period note what they term the Government's "primordial" preoccupation with the selection process, pointing out that from Treasury Board's perspective, "the protection of the integrity of the bidding process" was crucial. It is also plain from the memo that the Treasury Board officials were concerned that this preoccupation was not allowing them to address the real issues that had to be considered in the deal. The memo notes that this overwhelming concern with the bidding process had supplanted their usual priorities, personnel issues in particular. [Interoffice Memorandum from Mr. Mel Cappe to seven Treasury Board officials, dated April 5, 1993, Committee Doc. 001103.]

Privy Council Office Involvement

The shadow of the Privy Council Office ("PCO") lies across many of the Government documents on the Pearson project in this time period. There were numerous memoranda of meetings called by Mr. Glen Shortliffe "to check on the status of the negotiations/discussions on the redevelopment project for T1/T2." Mr. Broadbent testified that he and Dr. Labelle, Deputy Minister of Transport, went "almost weekly, to meetings in Glen Shortliffe's boardroom." [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:89.]

Treasury Board officials complained several times that Mr. Broadbent was dealing directly with Privy Council officials, rather than going through the usual channels. As a result, they noted repeatedly that it was "very difficult for [Treasury Board] to stay on top of this file." [See: Memorandum from Ms. Carole Swan to Mr. Sid Gershberg, dated April

29, 1993, Committee Doc. 00269; see also, Memorandum from Ms. Carole Swan to Mr. Sid Gershberg, dated May 10, 1993, Committee Doc. 00272.]

Ultimately, when Mr. Broadbent's term as Chief Negotiator ended, he was replaced with an official brought in from the Privy Council Office, Mr. Bill Rowat.³³

Mr. Shortliffe did not believe that he spent a "disproportionate" amount of time on the Pearson file. He justified the many meetings and close supervision with the statement that the deal "was one of the priorities that the government of Prime Minister Mulroney had identified that it wanted to have completed before it left office." [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:78.] And in particular, part of the close involvement of PCO was attributed to the intense pressure being brought to bear to conclude the deal by May 31/June 1, 1993. (This does not fully explain, however, why PCO dispatched Mr. Rowat to conclude the deal, since his term as Chief Negotiator did not begin until after the June 1 target date had passed with no agreement reached.)

Mr. Shortliffe testified that the May 31/June 1 deadline was driven by the desire of Prime Minister Mulroney to have the deal completed before he relinquished his office to his successor. [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:74.] Mr. Broadbent told the Committee that he was fully aware of the Prime Minister's active concern with the progress of the file. Mr. Broadbent testified: "Mr. Shortliffe said that the Prime Minister had a live interest in this file and quite frequently asked how it was going." [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:103.]

³³ Mr. Broadbent was quite frank -- with the Committee and also at the time with Dr. Labelle and Mr. Shortliffe -- that he felt he had been working under unacceptable conditions, "not getting the support from the airports group that I should have been getting." [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:98-99.] Dr. Labelle's view was rather different: after noting that the Department met those demands presented by Mr. Broadbent whenever possible, but that some were "unreasonable" [8:42], she described the events around the non-renewal of his contract as follows:

"Mr. Broadbent was hired for a term contract which was to end in mid-June.... When it became evident to me that we were likely going to be slipping beyond mid-June, I spoke to Mr. Broadbent and asked whether he would consider an extension of his contract if invited to do so. At that time, he indicated to me that he had other plans for the summer and although [he] was non-committal, [he] was not enthusiastic about pursuing this option. So that as the days went by and I was informed that there would be a new associate deputy minister coming to Transport, someone who in PCO had been following the file -- he was the senior officer looking after I think the operation side of government. Certainly our department was one that we were working through him in PCO. So he was someone who knew the file well and at that time so that in the last days Mr. Broadbent was not invited to renew his contract by myself, with the concurrence of the minister." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:44.]

An internal Paxport memorandum dated April 15, 1993, a copy of which was sent by Mr. Jack Matthews to Mr. Broadbent, reported "some interesting comments" made by Mr. Wayne Power, a Transport Canada official, in a meeting with a Paxport official:

"Wayne did make some interesting comments. He complained about the pace of the negotiations and about the **political interference** in the process. **He bemoaned that the government, having made a decision about the future of the terminals, didn't sit back and allow the public servants to get on with the process in an orderly fashion 'just like Terminal 3'.**" [Memorandum entitled "Coordination with Transport Canada at LBPIA," from Mr. Dale Nankivell to Mr. Jack Matthews, dated April 15, 1993, Committee Doc. 001104, emphasis added.]

The Treasury Board officials who appeared before the Committee attested to the political pressure that was applied to complete the deal by May 31, 1993. In response to questions posed by Senator David Tkachuk, Mr. Cappe testified that there was "strong pressure," and that it "was a reflection of the number of meetings that were being called. Mr. Broadbent coming back from his negotiations indicating that he wanted to see progress quickly because he needed to deliver May 31.... [T]here was a common understanding among senior public servants that there was an urgency to the file to get the deal done by May 31st." [*Committee Transcript*, Tuesday, August 22, 1995, Issue No. 14, 14:94.]

The Committee learned that this pressure was coming directly from the Prime Minister.

On April 29, 1993, Ms. Carole Swan, then Director of the Transport and Environment Division of Treasury Board, noted that, "Mr. Shortliffe may indicate the need to meet regularly to keep things on track for June 1." [See, eg., Memorandum from Ms. Carole Swan to Mr. Sid Gershberg, dated April 29, 1993, Committee Doc. 00269.]

By May 6, 1993, the pressure had increased. "Shortliffe wants to meet weekly... to keep every one on track on both T1 and 2 as well as the runways." [Interoffice Memorandum from Mr. Paul Gonu to Mr. Al Clayton, dated May 6, 1993, Committee Doc. 000417.]

Mr. Broadbent agreed with Senator Michael Kirby that this level of involvement by the Privy Council Office, and by the Clerk of the Privy Council, was unprecedented:

Senator Kirby: [Y]ou just said that there were weekly meetings. I guess maybe having been around the job of secretary of the cabinet on and off for many years, I'm quite stunned that this issue was of such importance that the secretary of cabinet would take the time to spend weekly meetings at it. That gives it a level of importance that is truly unbelievable.... [I]t's just incredible.

Mr. Broadbent: ...[Y]es, I would agree with you. It did show the significant interest at senior levels of bureaucracy in the central agencies, and in part, senator, that, I put it to you, might well be because they knew that we were being asked to do an extreme amount of work in a very short time and didn't want things to go off the rails.

Senator Kirby: But would you not also agree on the basis of your other experience in the PCO that various parts of the public service often get asked to do things under very short time frames, but that central agency involvement -- because after all, this was a line department transaction.

Mr. Broadbent: Yes.

Senator Kirby: This was not a major policy issue in a policy sense. It was a transaction type issue. I have certainly never seen a case where the central agencies would have taken -- at least the PCO and the secretary of cabinet specifically -- this level of interest in it.

Mr. Broadbent: I can't think of a comparable situation either. [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:109.]

The documents highlight the difficulties officials faced by reason of the May 31/June 1 deadline. Back in November, 1992, Mr. Shortliffe had pointed out to the Prime Minister that "Transport's current estimate is ... it will take a minimum of 12 months to negotiate the lease." [Memorandum to the Prime Minister from Mr. Glen Shortliffe, dated November 16, 1992, Committee Doc. 002188.] As of late April, 1993, negotiations had not even begun; according to other memoranda to the Prime Minister from Mr. Shortliffe, "delays by Paxport and Claridge in clarifying the status of Mergeco ... were slowing progress on the file." [Memorandum for the Prime Minister from Mr. Glen Shortliffe, dated April 23, 1993, Committee Doc. 002210; see also, Memorandum for the Prime Minister from Mr. Glen Shortliffe, dated April 8, 1993, Committee Doc. 002097.]

Nevertheless, the documents show how great the pressure was to meet the June 1, 1993 deadline. Officials pointed out the risks in rushing such complex negotiations, noting that, "This timetable is extremely tight... we understand from Allan MacGillivray [an official in the Privy Council Office] that every effort will be made by David Broadbent to ensure that *nothing compromises the attainment of this objective*. As a result, very little time is left to address the human resources issues through an agreement with the operator." [Scenario Note, Interdepartmental Meeting on T1/T2 Human Resources Issues, dated April 27, 1993, Committee Doc. 002101, emphasis added.]

And from other officials:

"The deadline of June 1 still appears extremely optimistic. Negotiations are to be completed with sensitive personnel and financial issues still to be worked out. Locking in a complex deal under a long term lease agreement in such a short period may not be very prudent." [Memorandum from Ms. Carole Swan to Mr. Sid Gershberg, dated April 29, 1993, Committee Doc. 00269.]

Only on May 5, 1993 did negotiations officially begin,³⁴ and yet the "strong pressure" to meet the patently unrealistic May 31 deadline continued:

"Mr. Shortliffe has called this meeting to check on the status of the negotiations on the redevelopment project for T1 and T2. There remains strong pressure to meet the deadline of May 31, 1993, to arrive at an agreement. The Minister of Transport announced on Wednesday, May 5, 1993 that 'Formal negotiations based on the proposal submitted by Paxport are currently under way'." [Memorandum from Ms. Carole Swan to Mr. Sid Gershberg, dated May 10, 1993, Committee Doc. 00272.]

While a Prime Minister's desire to accomplish particular goals before leaving office is unremarkable, exerting pressure to conclude a deal of this magnitude in a matter of only three weeks demands scrutiny. The agreements would have transferred control of Canada's largest airport -- its "gateway" to domestic and international markets -- for 57 years. The Committee was told this was a vastly more complicated transaction than that for Terminal 3, since this involved a transfer of existing buildings, existing leases with retail tenants, existing leases with airlines, and existing arrangements with employees. [Testimony of Mr. Wayne Power, *Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:11-12.] **Yet, while the simpler Terminal 3 contracts took ten months to complete, the Terminals 1 and 2 leases were to be negotiated and concluded in three weeks.** Why? The only answer the Committee received was that the Prime Minister wanted it done before he left office.

³⁴ The testimony from all Government officials was clear that while the issue of financeability was unresolved, the parties could only "consult," they could not "negotiate." [See, eg., testimony of the Hon. Jean Corbeil, *Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:27.] However, it would seem from a review of the Government memoranda from March through April, 1993, that Mr. Broadbent in fact was negotiating with Mergeco. For example, a memorandum prepared by Mr. Broadbent of a meeting he held with Mr. Jack Matthews and Mr. Peter Coughlin on March 23, 1993, headed "Focus on Air Canada Aspect," Committee Doc. 001555, describes essentially a negotiation session, complete with proposals and counterproposals of rents, deferrals of rents, and future negotiation workplans. Again, this raises questions about the process: clearly the Chief Negotiator was so concerned about meeting the May 31/June 1 deadline, that he was prepared to begin negotiations even before he was authorized to do so by the Government.

The Changing of the Guard

Ultimately the May 31/June 1 deadline was not met. As it became evident that the Government would change (from one headed by the Rt. Hon Brian Mulroney to one headed by the Rt. Hon Kim Campbell), several interesting events occurred.

First, a curious agreement was prepared quickly and executed on June 18, 1993, between the Government of Canada and Pearson Development Corporation. The agreement contains no final terms relating to the development project because, as was evident from the documents and the testimony of the successive negotiating teams, the many serious issues dividing the parties were still open and unresolved. Indeed, the agreement states that it "does not constitute a legally binding agreement between the parties." [Letter-Agreement between Her Majesty the Queen in Right of Canada and Pearson Development Corporation, dated June 18, 1993, Committee Doc. 000832.] The entire purpose was to bind the parties -- in particular, the new Government -- to continue the negotiations.

Mr. Rowat explained to the Committee that since "there was going to be clearly a change in the leadership and a new leader appointed and a new cabinet appointed.... there was a great deal of ... uncertainty...." The purpose of the document was to "record where we were in terms of the negotiations at a point in time and what the intentions were of the groups on both sides as to what the next steps would be from thereon in." [*Committee Transcript*, Thursday, August 3, 1995, Issue No. 10, 10:64-65.]

However, notwithstanding that this agreement failed to move the negotiations forward substantively, it succeeded in solidifying the understanding of all parties that a deal would go through. As such, it constituted one of the "milestones" referred to in these hearings by the negotiators -- a milestone that marked the Government's deepening commitment to a deal with these developers, and conversely, the possibly deepening exposure by the Government to restitution payments should it decide that the terms were unacceptable, or for whatever reason, that it did not wish to proceed. [Testimony of Mr. William Rowat, *Committee Transcript*, Monday, October 23, 1995, 1110-3.]

Around this time, another change was made that affected the file: Dr. Huguette Labelle, who had been Deputy Minister of Transport, was replaced by Mme. Jocelyne Bourgon. Dr. Labelle was clear with the Committee that she did not ask for a transfer from the Transport portfolio. While she would not say so, it is known that the transfer from Deputy Minister of Transport to President of the Canadian International Development Agency is a demotion in civil service terms, from the highest Deputy Minister ranking to a lower one. [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:33.]

The circumstances of this shuffle of deputy ministers is interesting. Mr. Bill Neville, who it will be recalled was part of Paxport's lobbying team, also acquired other responsibilities in June 1993: he became the head of the transition team as the Rt. Hon. Kim Campbell became the Prime Minister. As Mr. Neville explained his duties:

Mr. Neville: In general terms, the agenda involved the actual transition arrangements between the changing of the guard, if you will, the restructuring and reorganization of the cabinet and the government that accompanied this particular transition. The appointment of ministers, the staffing of our office and a kind of immediate agenda of activity for Ms. Campbell. Those were the major items.

Senator Stewart: Did you discuss the disposition of deputy ministers, any deputy ministers who had proven unsatisfactory and who should be supplanted?

Mr. Neville: As part of the transition process flowing essentially out of the reorganization of the ministries that was involved there, there was also a reorganization of deputy ministers and that happened during this period.

Senator Stewart: Could you give us any specifics, let's say with regard to Transport?

Mr. Neville: It was during this reorganization that Mrs. Labelle was moved to CIDA as I recall. Jocelyne Bourgon was appointed the Deputy Minister of Transport. [*Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:21.]

Throughout the time that Mr. Neville was advising Ms. Campbell on ministers, staffing and the deputy minister shuffle, he continued to invoice Paxport for lobbying activities on Paxport's behalf. [See: Invoices signed by William H. Neville, made out to Paxport Management Inc., dated May 3, 1993 ("for services for the month of May, 1993"); June 3, 1993 ("for services for the month of June, 1993"); July 2, 1993 ("for services for the month of July, 1993"); and August 3, 1993 ("for services for the month of August, 1993"), Committee Doc. 002290.]³⁵

Clearly there was a "revolving door" of personnel on this file, with deputy ministers, assistant deputy ministers and chief negotiators being moved in and out of the file at a rapid

³⁵ Mr. Ray Hession, former President of Paxport, testified repeatedly that Mr. Neville had been "off the payroll" for "several months" by the time he worked on Ms. Campbell's transition team. [See: *Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:10, also 9:14.] However it is evident from the invoices supplied by Mr. Neville that he continued to bill Paxport for lobbying services right through the relevant time that he was working (on a volunteer basis) for Ms. Campbell. [See: testimony of Mr. Neville, *Committee Transcript*, Thursday, August 24, 1995, Issue No. 16, 16:20.]

pace. Noting this, Senator John Bryden asked the Hon. Jean Corbeil the logical question: "Did you keep changing personnel until you got somebody that would make this deal happen?" [*Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:73-74.] Mr. Corbeil refused to answer the question, choosing instead to attack the question as "insidious."

When Mme. Bourgon became Deputy Minister she, together with the Minister of Transport, decided that she should focus on the overall needs of the Department, rather than trying to get up to speed on the complex negotiations. [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:53.] As a consequence, Mr. Rowat retained control of the file.

The only constant, then, throughout the evolution of this deal from inception until signing in October 1993, was Mr. Glen Shortliffe, who first was involved as Deputy Minister of Transport and then continued active, close supervision from his positions at the Privy Council Office. Ultimately, of course, it was his assistant, Mr. Rowat, who stepped in to resolve the outstanding issues in the negotiations, and to get the deal done.

V. NEGOTIATING THE AGREEMENTS

On May 5, 1993, negotiations officially began between the government and Mergeco (by this point, renamed Pearson Development Corporation, hereinafter "PDC"). As was seen earlier, it was critically important to the Government that negotiations proceed, and be seen to proceed, on the basis of the Paxport proposal, and not either the Claridge or a "third" (or PDC) proposal. The Government recognized that otherwise the integrity of the RFP process would be seen to have been compromised.

Comparing the terms of the final deal with those of each of the original Paxport and Claridge proposals, it is plain that the final deal was much closer to the Claridge proposal than that of Paxport. This is evident from a comparison of the key numbers:

Return to the Crown: This was probably the most important element in the selection of the Paxport proposal as the "best overall acceptable proposal." The original return to the Crown promised by Paxport was \$1,246 million. The return to the Crown promised by Claridge in its proposal was \$642 million. The return to the Crown under the terms of the final deal was \$843 million -- far closer to that set out in Claridge's proposal than what was promised in Paxport's proposal.

Construction Expenditures: Paxport promised to spend \$858 million in staged redevelopment of the terminals; Claridge promised to spend \$606.2 million in staged

redevelopment of the terminals; and the final deal required \$682 million in staged development. (As will be set out in detail below, only \$350 million was actually *required*; the balance of the construction expenditures would be necessary only if certain passenger volume levels were met.) \$682 million is much closer to \$606.2 million than it is to \$858 million.

Development Plan Financing: Paxport's original proposal required \$858 million, to be financed through a combination of \$106.5 million equity, \$618 million in debt, and \$33.5 million from cash flow from operations. The Claridge proposal required \$758.2 million, to be financed with \$227.5 million in equity and \$530.7 million in debt. The final deal required \$742 million, to be financed through \$258 million in equity and \$484 million in debt. The similarities between the final deal and the Claridge proposal are striking.

Airline Costs, Per Passenger: Paxport's proposal would have seen airline costs for each passenger rise to \$4.93 in the first year, with this cost jumping to \$11.79 in Year 10. Claridge's proposal would have restricted airline costs for each passenger to \$2.49 in Year 1, going up to \$8.79 in Year 10. Under the final deal, airline costs per passenger would have been \$2.38 in Year 1, rising to \$8.15 in Year 10.

Public Servants' Concerns

The contrast between the original Paxport proposal and what was being proposed for negotiation concerned public servants virtually as soon as negotiations began. In a memorandum dated May 10, 1993 to Mr. Sid Gershberg, Ms. Carole Swan of the Treasury Board noted:

"The most significant issue may be the degree of difference between what is being proposed now for the redevelopment of T1 and T2 and the original Paxport proposal (over \$600 million)." [Memorandum dated May 10, 1993 from Ms. Carole Swan to Mr. Sid Gershberg, Committee Doc. 00272.]

The memorandum went on to discuss the proposed investment to redevelop the two terminals: an immediate investment of either \$47 million or \$96 million. It continued:

"Further development beyond the \$47M or \$96M investment in line with the original \$600 million Paxport proposal would depend on passenger volumes reaching levels that make the project viable and:

- the airlines agreeing to leases that would allow recovery of their share of the costs; or

- the cash being raised by a Passenger Facility Charge (PFC)." [Ibid.]

After noting the agreement negotiated with respect to a passenger facility charge -- "that no PFC would be considered before January 1996 and the Crown (or its assignee -- possibly an LAA) would have to approve the proposal and its details" -- Ms. Swan warned:

"Therefore, there is a risk that if these conditions are not met, the terminals could be turned over under a 57 year lease (40 year term with a 17 year option) for no other investment commitment than \$47M or \$96M." [Ibid., emphasis added.]

Indeed, those were the final terms of the lease signed by the parties. The Ontario Government conducted a review of the final agreements for its submission to Mr. Robert Nixon. It noted:

"The tenant gets 57 years regardless of whether all the development stages are taken out. This is unusual. Typically, if a Tenant does not develop, it can lose the lease. The only opportunity for a Landlord buy-out is after exercise of option for the last 20 years." [Appendix A to Provincial Submission to Robert Nixon, dated November 17, 1993, Committee Doc. 002318, page 212-720, emphasis added, underscoring in original document.]

Returning to May, 1993: There were more internal memoranda, expressing ever more urgent concern among the public servants about the deal being negotiated. On May 17, 1993, Mr. Robert Fonberg of the Department of Finance wrote to his Assistant Deputy Minister, Mr. Michael E. Francino, to update him on the negotiations and outstanding issues. This memorandum began:

"Transport officials have been working at a furious pace to meet the goal of signing final agreements by the end of May. **Within weeks, the government will be bound by the terms of a 57 year lease.**" [Memorandum dated May 17, 1993 from Mr. Fonberg to Mr. Francino, Committee Doc. 002072, emphasis in original document.]

Mr. Fonberg expressed great concern over the potential that the developer, in control of all three terminals, would be in a position to charge monopolistic fees:

"As mentioned in previous notes, once final agreements are signed with PDC, the developer will oversee all three terminals at Pearson. **We are concerned that PDC will soon be in a position to charge "monopolistic" fees.** Transport officials are considering ways of controlling future prices but have not yet developed acceptable solutions. **Safeguards need to be built into the ground lease so the airlines cannot be hit with charges beyond those contemplated in the original proposal.**

"Regarding airline charges, we should note that the Paxport proposal forecasts a more than tripling of fees over the next 10 years, from \$2.38 to \$8.72 per passenger. The government may be open to some criticism for condoning, and perhaps encouraging, these higher rates: PDC will be setting prices to recover capital expenditures, O&M costs, ground rents and profits; in the early years of the project, ground rents of almost \$30M account for a third of the airline charges; by the tenth year, these rents approach \$100M. Clearly, if this deal stands, a communications plan should be developed which defends the higher prices and ground rents. Government cannot "pass the buck" to the developer." [Ibid, emphasis in original document.]

No significant safeguards were built into the lease, however; and the cost of the development, including both the high return to the Crown and the substantial profits to the developers, would have been passed right through to the travelling public.

Mr. Fonberg discussed the Finance Department's review of "the economics of this project to determine if the risk/return trade-off faced by investors is reasonable." Working with PDC's forecasts of an after-tax internal rate of return of 19%, Mr. Fonberg warned:

"'Risky' projects might require a rate this high to attract investors; however, our initial impression of the T1/T2 project is that the developer bears little risk:

- development only proceeds once traffic volumes surpass pre-defined trigger levels,
- airline acceptance of higher prices or the introduction of PFCs are also pre-conditions to further development work,
- leases between PDC and the airlines will likely be structured so the airlines continue to pay the same fees irrespective of traffic levels,
- the formula for setting airline charges enables PDC to flow through three quarters of any construction cost overruns to the users, and
- Transport may be considering a 'guarantee' on traffic whereby a commitment would be made to not divert traffic from Pearson if volumes could fall below 30 million passengers.

...

"In summary, our preliminary view is that a 19 per cent IRR for the T1/T2 project may be excessive, considering the minimal level of risk." [Ibid., emphasis in original document.]

On these points, the deal signed in October 1993 did not remove the risks against which Mr. Fonberg had warned. Indeed, Transport ended up agreeing to the guarantee not

to divert traffic from Pearson, thereby bestowing a monopoly of access to the skies over southern Ontario upon the developers.

The Finance memorandum ends pessimistically:

"Unfortunately, given the government's desire to sign a deal within two weeks, it is unlikely that Transport would be successful in negotiating a lower rate from the developer. No doubt, PDC feels it has an upper hand in negotiations."
[*Ibid*, emphasis in original document.]

Concessions Won by the Developers

Indeed, PDC managed to strengthen significantly its upper hand in the negotiations by means of the so-called "Air Canada Sandwich." As will be seen, PDC managed to persuade the Government that a serious wrong had been committed by its officials in the RFP process, which could give rise to legal claims.

A Treasury Board memorandum of May 19, 1993 also noted that "the Mergeco deal is already heavily in favour of the developer (i.e. low risk, high rates of return) and further concessions are unwarranted." [Memorandum dated May 19, 1993 from Mr. Sid Gershberg to Mr. Mel Cappe, Committee Doc. 001107.] The memorandum notes:

"[S]triking a deal on the guarantee of future lease payments to be made by airlines or a promise by the government to agree to a PFC may put the next government in a very difficult position.

"Overall, it is not clear to us whether Transport has developed a 'bottom line.'" [Ibid., emphasis in original document.]

If there was a bottom line, it certainly was not in place in late May 1993. In a memorandum dated May 25, 1993, Mr. Rowat explained to Mr. Shortliffe a proposal by Pearson Development Corporation to defer \$11 million in annual rents. Mr. Rowat reported:

"Mergeco is proposing to spend \$96 million in the first two years but only on the condition that Transport Canada reduce its rent by \$11 million per year until new agreements with the airlines can be reached, maybe not until 1997. We have recommended against this rent reduction because:

- it could reinforce the preconception in the minds of the project's critics that **the agreement was not reached on wholly commercial terms;**
- the rates of return on the project are already adequate (18.2%);

-
- it would give the appearance of **the government subsidizing the project**, when the underlying principle is private sector development;
 - **there is no source of funds for the up to \$44 million cost,**
 - it might appear to be a subsidy to the airline industry." [Memorandum to Mr. Shortliffe from Mr. Rowat, dated May 25, 1993, Committee Doc. 002194, bold added, underscoring in original document.]

Mr. Rowat testified that the issue of the rent deferral came to a head in late May. He was very clear: "At that point, the issue was resolved by the government, and **it was the government's directions to officials that we should take the \$11 million deferral for three years.**" [*Committee Transcript*, Wednesday, August 16, 1995, Issue No. 12, 12:7, emphasis added.]

When he testified, Mr. David Broadbent, who had first negotiated this rent deferral, agreed that it could be seen as "a subsidy or ... a loan from the Crown" to the developers in order to get the project started. [*Committee Transcript*, Thursday, August 3, 1995, Issue No. 10, 10:27.]

This direction contradicted the Request for Proposals, which provided:

"Notwithstanding that the Government is expecting an appropriate financial return in consideration of its contribution, the Government will provide no form of financial commitment including, for example... no provision of additional financial guarantees and no investment of any capital in the Project. The Government will not assume any role which may be interpreted as a partnership or joint venture.

"Furthermore, the Government will make no guarantees regarding any assumptions with respect to Airport capacity, passenger volumes, airline assignments, commercial rents and charges, or any other variable factor or condition which may impact upon the Developer's calculations of revenues and costs." [Terminal Redevelopment Project Request for Proposals, March 1992, page 29, Committee Briefing Book, Tab "H".]

Viewed in context, the Government's ready agreement to this \$33-million deferral does "reinforce the preconception in the minds of the project's critics that the agreement was not reached on wholly commercial terms," as Mr. Shortliffe was warned that it might.

The Committee heard testimony about a number of provisions in the final deal that were directly counter to the Request for Proposals; risks normally borne by the developers (the rationale for their reaping large profits from the project) shifted onto the Government; insulated the developers from competitive market forces; and passed the costs of the

development, of the profits to the developers and of the return to the Crown on to the shoulders of the travelling public. These included:

The passenger diversion guarantee: In the RFP, the Government was explicit that it would not provide **any** guarantees with respect to airport capacity, passenger volumes or airline assignments.

Nevertheless, Paxport was given such a guarantee by the Government. The Government promised not only not to divert traffic away from Pearson, but that it would not allow any passenger terminal facility to be developed within 75 kilometres of Pearson, until the volume of passenger traffic at Pearson Airport -- including all three terminals -- reached 33 million people annually.³⁶

Transport officials were emphatic in their opposition to such a guarantee. Mr. Power pointed out:

"It is my view that the capacity figures being put forward by Paxport are grossly exaggerated and unachievable. Additional terminal facilities to serve the needs of the Toronto area will be needed before those capacity figures are achieved. A compensation package will be a serious contingent liability for the Crown and an impediment to the provision of services as and when needed.

"In summary, it is recommended that traffic guarantees, compensation, protection from competition or similar concepts be rejected. Paxport has expressed an interest in participating in a privatization initiative, expects to reap rewards which are equal to or greater than most private-sector initiatives, and should be prepared to do so under conditions which exist in the private sector." [Memorandum from Mr. Wayne Power to Mr. Chern Heed, dated May 11, 1993, Committee Doc. 002013, emphasis added.]

The same warning was sounded in another Transport Canada memorandum, this one from May 12, 1993:

"Diversion of traffic could result if one or several of the airlines occupying T1/T2/T3 decided to relocate to another facility or decided to split their operations shifting some traffic to a new facility. It could also occur if airlines not operating at T1/T2 or T3 set up in a new facility and attract passengers that were using T1/T2 or T3 airlines. This type of diversion, initiated by the airlines based on market forces (location, access, level of service, price) should be accepted by Mergeco

³⁶ As the Chairman, Senator Finlay MacDonald, pointed out during the hearings, this figure should more accurately be stated as 31.5 million, as the Government was allowed on a one-time-only basis to divert up to 1.5 million people. [*Committee Transcript*, Tuesday, August 22, 1995, Issue No. 14, 14:5.]

as a risk of doing business. If their 'product' is competitive then they should be able to maintain their market share." ["Traffic Diversion - Minimum Passenger Volume to 'Guarantee'?", dated May 12, 1993, Committee Doc. 002008, emphasis added.]

Mr. Heed -- Airport General Manager at Pearson -- forwarded Mr. Power's May 11 memorandum to Mr. Victor Barbeau, with the comment: "I am afraid [Mr. Broadbent] is sympathetic to giving Paxport some sort of comfort to protect them up to 39 million passengers. I see this as a guarantee or in other words a possible contingent liability...." [Memorandum from Mr. Chern Heed to Mr. Victor Barbeau, dated May 12, 1993, Committee Doc. 002013.]

There was an exception to the passenger diversion guarantee. The Government could proceed with the development of another airport to compete with Pearson, so long as it paid compensation to PDC or allowed it access to Area 4, a section at Pearson that has been targeted for future development, but which was expressly excluded from the Request for Proposals. Once again: PDC managed to gain a shield from all risk, persuading the Government itself to bear the risk (the compensation would be paid from the Government's ground rents under the agreement), and also to violate the terms of the Request for Proposals.

It is also clear that providing such a guarantee made it impossible for the Government to promote the use of the Mount Hope airport facility at Hamilton as an alternative access point to Southern Ontario -- an initiative launched in the very same August, 1989 Strategy for the Future of Aviation in Southern Ontario that had initiated the redevelopment of Terminals 1 and 2. [Minister's Press Release No. 98/89, August 18, 1989.]

Hamilton is as close to Toronto as Newark is to New York City; yet **in their eagerness to finalize the deal with PDC, the negotiators surrendered the Government's ability to develop the airport there as an alternative access point to southern Ontario**, even though that was part of the original Government plan, and even though to provide such a guarantee ran directly counter to the terms set out in the Request for Proposals.

Passenger triggers for construction: As noted earlier, the proposal anticipated a staged course of construction at the terminals. However, this changed over the course of negotiations to an agreement whereby the only firm obligation of the developers was to complete the "quickstart" construction -- \$96 million -- followed by \$254 million for stage 1B. No other construction would ever take place at the airport -- for 57 years -- unless and until certain passenger levels had been reached:

Senator Kirby: Am I correct then in saying that unless the passenger levels were very carefully negotiated, it would in fact be possible for the developers to have had

this 57-year lease and spent no money at all beyond their initial quick start option because the trigger points were not reached? Would that have been a possibility?

Mr. Broadbent: If either the negotiators for the Crown had been stupid and incompetent or passenger growth in Pearson had absolutely stagnated, yes.

Senator Kirby: Well I'm not interested in imputing levels of intelligence to various people. Am I correct in saying that if the passenger levels had relatively -- if we just didn't reach the trigger points, and am I correct in saying the developers would not have had to spend more money?

Mr. Broadbent: You're quite correct, and development wouldn't have taken place and the negotiation of the trigger point, senator, was of fundamental importance. [*Committee Transcript*, Thursday, August 3, 1995, Issue No. 10, 10:31.]

As is evident from the internal memoranda quoted at length above, these provisions gave rise to great concern among the officials, particularly in the Finance Department and the Treasury Board. This deal was trumpeted as a "\$700-million terminal development initiative -- the largest ever undertaken at the airport," when it was announced on August 30, 1993. [Transport Canada News Release Communiqué No. 187/93, dated August 30, 1993, Committee Doc. 002269.] However, it was very possible that much of the \$700 million would never be expended on the airport, which could just as possibly be left undeveloped for 57 years -- with the Government unable to develop other airports in the area, unless it paid PDC compensation. In other words, the Government assumed the risk of low passenger levels at the airport. PDC was assured of keeping the airport under its control for 57 years, with few hard obligations to invest in the needed construction, and of course no political responsibility to the community it was serving.

The dangers for both the Government and the travelling public were exacerbated by the provisions in the deal with respect to Terminal 1 renovations. The Government had agreed to pay one-third of the costs required to keep Terminal 1 open, if those costs exceeded \$15 million. However, those renovations would not have begun until certain passenger trigger levels were achieved; consequently, there was a very real risk that the Government's financial exposure in the continued upkeep of Terminal 1 could run into millions of dollars.

Furthermore, as explained by Mr. Stephen Goudge, a respected lawyer who served as legal counsel to Mr. Nixon in his review of the Pearson Airport deal:

"T1 could have been forced to close at some stage because of age, given that the passenger triggers were not met. That would have required the passenger traffic below the triggers to be split between T3 and whatever portion of T2 had been redeveloped. This might have forced the Crown to develop other facilities before a 33 million passenger threshold was achieved, thus reducing the Crown's rent for

the amount of passengers transferred as well as the capital cost of the new facility."
[*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:47.]

In fact, stage 2, which was targeted to begin in May 1997, had a passenger trigger level of 24.2 million. At that time, officials were projecting that the terminals would be accommodating "roughly 26 or 27 million passengers a year" by 1997-98. [Testimony of Mr. John Desmarais, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:68.]

However, the recession lasted longer at Pearson Airport than expected, and the levels remained flat. Today, at the end of 1995, passenger levels at Pearson Airport are only around 20.5 million. [Testimony of Mr. John Desmarais, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:72.]

Passenger facility charge: A passenger facility charge was accurately defined during the hearings by the Chairman, Senator Finlay MacDonald, as "a head tax levied on people as they pass through an airport terminal." [*Committee Transcript*, Tuesday, August 22, 1995, Issue No. 14, 14:6.]

Neither of the original proposals mentioned anything about a passenger facility charge; nevertheless, the final agreement authorized PDC to impose a passenger facility charge if Air Canada was unable to pay its rent due to insolvency. Air Canada's financial troubles were well known, and the rent it would have had to pay would have increased dramatically under the negotiated deal.

The Government was given a right of approval of the passenger facility charge. However if the Government did not give its approval, the agreement provided that the developers would be released from their obligation to proceed with construction -- without giving up any rights under the agreements.

Senator Michael Kirby summed up the consequences for the travelling public that resulted from the combination of the passenger facility charge and the passenger diversion guarantee:

"When you say that there was to be a passenger diversion guarantee so that, in effect, passengers couldn't leave Pearson and go elsewhere, while simultaneously ... the company ... is allowed to charge a passenger facility charge, have you not essentially absolutely left the travelling public in an impossible situation? On the one hand, they can't go anywhere else because the government won't allow diversion of traffic and, on the other hand, these people have effectively the right to tax -- I use that in quotes, it's not a formal tax -- but the right to charge people.

Where is the consideration for the consumer in all this?" [*Committee Transcript*, Thursday, August 3, 1995, Issue No. 10, 10:33, emphasis added.]

The Committee has yet to receive a satisfactory response.

Airline Rents/ Cost to Travelling Public: The disdain for the interests of the travelling public is nowhere more evident than in the provisions of the deal that impacted on the rents to be charged to the airlines. **It was known by the Government from the beginning that the Paxport proposal called for a steep increase in rents charged to the airlines at Terminals 1 and 2. And it was known by the Government from the beginning that these costs would have been passed directly to the passengers.**

Paxport's proposal required renegotiating the lease with Air Canada to double the rent Air Canada currently was paying, "immediately, with no construction." [Testimony of John Desmarais, Senior Advisor to the Assistant Deputy Minister, Airports Group, *Committee Transcript*, Tuesday, August 15, 1995, Issue No. 11, 11:107.] Mr. Desmarais testified:

"That cost would obviously have been passed on to passengers, so you were starting to build very serious costs quickly, without any pay-off to the airlines or anybody else. So there were very high costs to the airlines and to the travelling public, if we accepted the proposal at face value, although we did get a lot of rent." [*Committee Transcript*, Tuesday, August 15, 1995, Issue No. 11, 11:107.]

Air Canada understood very well that its costs, and the costs to its passengers, would skyrocket under the Paxport proposal. Its concerns were described in a memorandum from Mr. Rowat to the Minister of Transport, dated June 30, 1993. Mr. Rowat explained that Air Canada did "not share our optimism for growth in air traffic," and felt that "Mergeco was loading too much cost on the backs of the air carriers." He noted that, "They feel that their needs for additional terminal redevelopment are no longer urgent.... They do not want to see their cost competitiveness impacted by the degree envisioned by the Mergeco proposals." [T1T2 Redevelopment Project, Committee Doc. 00294.]

Air Canada argued that it was being asked to raise its charges to passengers exponentially, to a level that risked making it uncompetitive, all to pay for a development that it neither needed nor wanted, and to subsidize the high return to the Government promised by the developer. Nevertheless the Government forged ahead with the project -- and joined actively in the negotiations between Air Canada and the developers.

In the end, it was the Government that made the concessions necessary to bring Air Canada "in line" with the deal, thereby sacrificing the high return which had justified the selection of Paxport's proposal in the first place. Claridge's proposal, as the Evaluation Committee had noted, recognized the realities of the airline industry during the recession,

and would not have required immediate renegotiations of the leases. The question persists: why was the Government so determined to bring this deal to a conclusion?

The "Air Canada Sandwich"

Many of the concessions made by the Government during the negotiations were justified to the Committee by the "Air Canada Sandwich": rights held by Air Canada, set out in a 1989 "Guiding Principles" document, that was not disclosed to the developers until very late in the process. The President of Claridge Properties Ltd. told the Committee that the revelation of these claimed rights was "devastating." [*Committee Transcript*, Tuesday, September 12, 1995, Issue No. 17, 17:14.] Their impact on the negotiations was enormous. However, the evidence shows that this impact was certainly exaggerated, and possibly even manipulated by certain of the parties for their own ends.

The background to the "Air Canada Sandwich" can be briefly described. In the late 1980s, Terminal 2 was in need of renovations. In 1989, Air Canada "came forward with a partnership proposal in which [Air Canada] would invest \$65 million, three quarters of the cost of the total improvements to Terminal 2 domestic wing, the balance being paid by Transport Canada." [Testimony of Mr. Dominic Fiore, retired Senior Director, Corporate Real Estate, Air Canada, *Committee Transcript*, Wednesday, August 16, Issue No. 12, 12:75-76.]

At that point, Air Canada had eight years left on its lease. As Mr. Fiore put it:

"In exchange for absorbing the lion's share of the investments in the rented facility, Air Canada and Transport Canada agreed to terms and conditions for a long-term lease on Terminal 2. The terms and conditions are referred to as the guiding principles for the Air Canada lease negotiations which are dated July 26 and signed, I believe, on August 1989." [*Committee Transcript*, Wednesday, August 16, Issue No. 12, 12:76.]

These "guiding principles," signed by Mr. Glen Shortliffe, then the Deputy Minister of Transport, referred to a "20-year lease term with two renewal options of ten years each for existing airline operational premises." ["Guiding Principles for Air Canada Lease Negotiations, Terminal II," dated July 26, 1989, Committee Doc. 00253.] Thus, it envisaged a possible 40-year lease between Air Canada and Transport Canada.

The legal status of this document, and its relevance to the T1/T2 project, was extensively discussed before the Committee. It was not mentioned expressly in the Request for Proposals, which referred to Air Canada's \$65 million investment in Terminal 2, and stated only:

"Air Canada's capital investments were made with the expectation that it would have the ability to enjoy the benefits of those investments over a reasonable and normal amortization period. Air Canada currently has a lease for the space which it occupies in Terminal 2. The term of this lease and options to renew will terminate in 1997." [Request for Proposals, page 27.]

Dr. Huguette Labelle, Deputy Minister of Transport when the RFP issued in March, 1992, testified that the view of Transport Canada was that the only official legal document in effect between Air Canada and the Government was the lease that would terminate in 1997:

"I think Transport Canada always took the position that the lease that they had with Air Canada was the official legal document that would be, you know, guiding any relationship with Air Canada in the future. And when it expired, then, of course, you negotiated another deal -- another agreement but that, at that time, the guidelines would serve as guidance to the negotiation of the next agreement with Air Canada." [*Committee Transcript*, Tuesday, August 1, 1995, Issue No. 8, 8:50.]

The Guiding Principles were not placed in the data room to which proponents had access as they prepared their proposals.

Mr. Broadbent first learned of the existence of this document when he had been "on the job a week or two," and in his words, he found it "alarming." [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:96.] He expressed great surprise that it had not been included in the data room, and he barely stopped short of suggesting it was a deliberate attempt by officials to sabotage the privatization project:

"How could an RFP go out in a department run by competent people when they know there's a document that promises to lease the thing that you're going out with an RFP to lease this to others?" [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:96-97.]

In fact, as the Committee learned, Transport officials were well aware of the Guiding Principles during the drafting of the RFP. A decision was taken that they did not belong in the data room, and that their substance should not be reflected in the RFP, because, according to Mr. Desmarais, it "was not a binding agreement. Only binding agreements went into the document room." [*Committee Transcript*, Tuesday, August 15, 1995, Issue No. 11, 11:32-33.]

This decision was made easier by the fact that when Air Canada was consulted during the preparation of the RFP, it did not raise the 1989 guiding principles document. In its submission to Transport officials at the time, it asked "that its non-cancellable lease, which

effectively extends through to April 30, 1997, be fully recognized and Air Canada's rights thereunder, including rental rate reviews based on current cost-recovery policies, be protected and maintained." [Letter from Mr. G.P. Mende, Manager, Airports Development, Air Canada, to Mr. Wayne Power, dated December 6, 1991, Committee Doc. 000483, page 520229.]

It also wanted a 30-year lease, plus two 15-year renewal options, as well as "full compensation for the unamortized cost of the \$66.9 Million investment in the current renovation at Terminal II." [Letter from Mr. G.P. Mende, Manager, Airports Development, Air Canada, to Mr. Wayne Power, dated December 6, 1991, Committee Doc. 000483, page 520230.]

Evidently, then, at the time when the RFP was prepared, Air Canada was not taking the position that the 1989 Guiding Principles was binding or in effect.

The relevant provisions of the RFP were sent to Air Canada for its review and comments before the issuance of the RFP. No comments were received from Air Canada challenging that document or the statement that the lease and options to renew would terminate in 1997. [Fax dated January 3, 1992 from Mr. Wayne Power to Mr. Julien DeSchutter of Air Canada, Committee Doc. 000483, page 520233.]

Moreover, Paxport and Air Canada had enjoyed a very close working relationship throughout the period when the 1989 Guiding Principles were prepared, and this continued at least into July, 1991.³⁷ Beginning in June 1989, and continuing well into 1991, Mr. Hession held regular meetings with Air Canada officials to ensure that the airline was entirely familiar and happy with Paxport's plans for the airport, thus to position Paxport as a credible candidate in the eyes of Transport Canada.

As late as July 1991, Mr. Hession was reporting on meetings with Air Canada officials in which, "It became clear early in the meeting that we are held in high regard by Air Canada. They both made it clear that, if there is to be a private developer for T1/T2, they continue to want us. They also said that they do not now nor intend in the future to have discussions or dealings with any other developer." [Memorandum from Mr. Hession to Mr. Don Matthews and Mr. Jack Matthews, dated July 12, 1991.]

³⁷ It is evident from an internal Paxport memorandum that Mr. Hession was in close contact with Air Canada officials as the latter were preparing to submit their statement of requirements to Transport Canada for inclusion in the Request for Proposals. See: Memorandum from Mr. Ray Hession to Mr. Don Matthews and Mr. Jack Matthews, dated March 6, 1991, reporting on a telephone conversation that morning with Mr. Doug Port of Air Canada.

Indeed, Paxport and Air Canada had joined together in June, 1990, to submit an unsolicited proposal for the redevelopment of Terminal 2 to Transport Canada. Correspondence received from Mr. Hession documents discussions between Paxport and Air Canada regarding "the business plan that Air Canada and PAXPORT will rely upon as the basis for their business deal (lease, etc.) to be negotiated following a government decision." [Memorandum entitled "Air Canada/Paxport Proposal," from Mr. Ray Hession to Mr. Don Matthews, Mr. Jack Matthews and Mr. Peter Goring, dated May 29, 1990, Committee Doc. Ref: 5700-1.35/P1-13, 1-#0268.]

It strains credulity that Paxport would not have asked Air Canada about the terms of its existing lease. It is also difficult to believe that Air Canada did not mention the 1989 Guiding Principles, when they were prepared and signed at the very time Air Canada was engaging in discussions with Paxport.

Under questioning from Senator Céline Hervieux-Payette, Air Canada officials testified that their discussions with Paxport always were based on the 1989 Guiding Principles.

Senator Hervieux-Payette: And was this business plan or this financial arrangement with Paxport, in the unsolicited proposal, did you take into account the guiding principle...?

Mr. Fiore: ... I do remember saying that we did have an agreement for our phase 1, that we would enter into a long-term lease. And it defined all the terms and conditions for the long-term lease once the 1997 lease expired.

...

We were consistent throughout. Whether it was with Transport Canada, whether it was with Paxport or whether it was with PDC, we always were consistent in our principles, the long-term lease, the whole thing. [*Committee Transcript*, Wednesday, August 16, 1995, Issue No. 12, 12:86-87.]

Mr. Gordon Baker, the lawyer for the Matthews Group, denied that Paxport had any knowledge of the guiding principles. [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:9-10.] In a paper submitted to the Committee, he claimed that the guiding principles were "undisclosed to the proponents... [until] a letter to Jack Matthews, President of Paxport Inc. and Peter Coughlin, President of T3LP Co. Investments Inc. on June 16, 1993," and that this constituted "a gross misrepresentation" to the proponents. ["Analysis of Robert Nixon's Pearson Airport Review," by Gordon R. Baker, dated May 31, 1994.]

The documentary evidence does not support Mr. Baker's claims. A memorandum of a meeting on March 3, 1993, of the Deputy Minister of Transport, Mr. Richard LeLay (Chief of Staff to the Hon. Jean Corbeil, Minister of Transport), Mr. Keith Jolliffe and Mr. Robert

Green of Transport Canada, and Paxport representatives, including Mr. Jack Matthews, shows that as of that date Mr. Matthews was well aware of Air Canada's position that it held a 60-year lease. The memorandum reports:

"Matthews stated that Air Canada's view is that they have a lease for 60 years and not just until 1997." ["Telcon Between Driedger/Heed/Desmarais and Barbeau/Jolliffe, March 4, 1993, Committee Doc. 00189.]

In any event, the *effect* of the dispute was clear. Air Canada used its leverage of the possible 40/60-year lease to defer the substantial rent increases required by the Paxport (now PDC) proposal. Meanwhile, the fear that Transport Canada officials had somehow been remiss in their obligation with respect to the RFP process gave Paxport and Claridge considerable leverage in their negotiations with the Government.

Mr. Broadbent testified that without the problem of the undisclosed 40-year lease document he was "firmly convinced that we could have concluded this deal on slightly better terms to the Crown." [*Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:100.] There was indeed an "Air Canada Sandwich," but it was the Canadian Government -- and in particular the Canadian people -- who ultimately were squeezed in the middle.

Concessions Won by Air Canada -- And Lost by the Other Air Carriers

In the final deal, all of the \$350 million Stage 1A and B construction was to go to Terminal 2 redevelopment. Air Canada agreed to pay higher rents after its existing lease terminated in May, 1997, in exchange for agreement from the Government to reduce its ground rent by 15%, which would then be passed on to the airlines by the developer. [See: Letter from Mr. Bill Rowat to Mr. Dominic Fiore dated September 21, 1993, Committee Doc. 000887; and see testimony of Mr. R.A. Morrison, Vice-President, Corporate Communications, Government and Industry Relations, Air Canada, *Minutes of Proceedings and Evidence of the Standing Committee on Transport*, Tuesday, May 31, 1994, Issue No. 8, 8:9; and see testimony of Mr. Rowat, *Committee Transcript*, Wednesday August 16, 1995, Issue No. 12, 12:9.]

Thus, in effect, the Government agreed to subsidize Air Canada and the other airlines by reducing the return to the Crown, in order to persuade the airlines to sign leases and to allow the deal with PDC to proceed. Again, this was contrary to the RFP, which had stipulated that the Government would not provide any subsidies.

The Canadian public was placed in the situation where they would bear the cost of this redevelopment project. The developers were clear that they were passing their costs on to the airlines, which would pass them on to their passengers. Canadians were supposed to

benefit because the Government would receive a high return from the project. However, this return was reduced, not once but twice -- the \$33 million rent deferral to subsidize the \$96 million quickstart program, and the 15% rent reduction to subsidize the airlines' rent to the developers.

Transport Canada went even further to bring Air Canada "on side" with the deal: it excluded the other air carriers from the negotiating process. On June 29, 1993, the Airline Operators Committee - Terminal 1 Sub-Committee wrote to Paxport, the Hon. Jean Corbeil, and to Mr. Chern Heed (the General Manager of Pearson Airport) protesting against their exclusion from the negotiation process, and against the anticipated rent increases:

"The carriers of Terminal One were disturbed to learn that Transport Canada had previously instructed Paxport to discuss their redevelopment plans only with Air Canada. Our exclusion was not justified.

"During the presentation, Mr. Trevor Carnahoff clearly stated that the staging is directly related to a projected increase in passenger traffic from 20 million in 1992 to 35 million by 1999. How did you arrive at a 75% increase over this seven year period? Are you not aware that there has been negative traffic growth in the past five years? This projection is unrealistic.

"Equally unrealistic is your plan to recover the cost of your \$750 million investment through increased retail sales, parking revenues and cost base leases. Terminal 3 was built using the same formula, which as all can see has thus far been a financial disaster. We cannot and will not put ourselves in a similar position.

"We would remind Paxport and the Government of Canada that the two major carriers (Air Canada and Canadian) lost, in the first 90 days of 1993, \$4.5 million per day for a combined first quarter loss of \$405 million. The U.S. carriers operating at Terminal 1 are facing the same financial difficulties.

"Is this the appropriate time to increase our operating costs at Pearson International Airport by 500%, which is a conservative estimate of what your \$750 million proposal will do?

"Who will remain in business to pay for your extravagant folly?" [Letter from Carole Pitre, Chairperson, A.O.C. - Terminal 1 Sub-Committee to Paxport Inc., dated June 29, 1993, Committee Doc. 001088, emphasis in original document.]

Continued Warnings from Public Servants of Problems with Deal

The many defects in this deal are clear with the benefit of hindsight. However, the documents show the numerous attempts made by Government officials to point out these defects at the time.

For example, on July 20, 1993, Mr. Ian Clark, Secretary of the Treasury Board, wrote a memorandum to the President of the Treasury Board in which he stated that the Treasury Board Secretariat "has several concerns over the Pearson Airport initiatives." He enumerated the following:

- the government will likely pay a heavy price for T1/T2 redevelopment, in terms of winning Air Canada support and/or granting concessions to Mergeco;
- Mergeco is trying to push any risk back on the government through guarantees on passenger volumes, deferred rent and the likely introduction of a PFC, since Mergeco believes the government wants a deal at almost any cost;
- the overall risks to Mergeco are low, yet the projected rates of return are high (14 to 16% over the 57 year lease term);
- the airport could become inefficient since operations would be segregated in three separate leases (T1/T2, runways and T3), overseen by two layers of bureaucracy (Transport and an LAA); and
- the role of an LAA would become quite limited, with the government facing criticism for denying Toronto interests an opportunity to manage this airport under the umbrella of an LAA, as done last year for four other major airports.

"TBS would prefer that Transport pursue negotiations with the Toronto LAA on a fast track basis and transfer the responsibility for T1 and T2 and runway projects to that entity. This would be consistent with the policy adopted for other major international airports. However, this may not be possible on T1 and T2 unless the proposed deal being negotiated with Mergeco collapses." ["Memorandum to the President" from Mr. I.D. Clark, Secretary, Treasury Board, dated July 20, 1993, Committee Doc. 002052.]

The Treasury Board was not alone in insisting upon the deal's serious defects. A month earlier, Mr. Keith Jolliffe, one of the key members of the negotiating team at Transport Canada, had written a memorandum he entitled, "Blue Sky Thinking: Terminal

Redevelopment Project -- LBPIA." Therein he listed each of the Government's objectives as set out in the RFP in seeking private sector interest in the redevelopment project. He then contrasted each of those objectives with the deal, noting in virtually every case how far the Government had abandoned its original purpose. The comparisons were appropriately entitled, "What's wrong with this picture?"

Among other things, Mr. Jolliffe noted that:

- Transport Canada's role as landlord would be considerably larger than anticipated, and not minimized as set out in the RFP;
- there would be no effective "synergies" linking the three terminals: Terminal 3 would be operated under a separate management structure, and by a separate entity, Lockheed Air Terminals; Terminals 1 and 2 would be operated by transferred former Transport Canada employees;
- with the rent deferral clause, the diversion clause and compensation, and other specified clauses, "the government [was] agreeing to underwrite private sector risk taking."

With respect to "an appropriate financial return for the Crown," Mr. Jolliffe noted that:

"Soft assurances or assumptions in the Paxport proposal have been replaced by the hard negotiations strategy of Claridge. This means that the deal is sliding down the financial slope of the Paxport return to the Crown towards ATDG proposed return to the Crown."

And that is exactly what happened. ["Blue Sky Thinking," dated June 24, 1993, Committee Doc. 002077.]

On September 14, 1993, Mr. Wayne Power wrote to Mr. Peter Coughlin expressing a number of concerns Transport Canada had with the deal. These concerns included issues of terminal capacity and the impact of the commitments made to Air Canada on other air carriers. For example, Mr. Power wrote:

"The Paxport Proposal emphasized the high capacity levels of the redeveloped terminals and it is apparent that public statements have created the perception of a major capacity increase. But, as you are aware, Transport Canada has expressed reservations as to the extent of the capacity increase in respect of the terminal complex generally and particularly in respect of gate/aircraft parking capacity. The redeveloped terminals will have essentially the same number of bridged aircraft

gates as currently exists; yet access and control of gates are important components of the Air Canada agreement and of T1T2LP's access and pricing policy." [Letter from Mr. Wayne Power to Mr. Peter Coughlin dated September 14, 1993, Committee Doc. 001672.]

A draft reply dated September 19, 1993 was received from the consortium, and circulated among Transport Canada officials for comments. Mr. Power passed the draft reply to the chief negotiator, Mr. Rowat, with the following cover note:

"Instead of providing some comfort that there is a well thought out plan available, their draft response indicates that they are still very much in the concept stage and don't have the answers we or the airlines are looking for. **There is no point in pressing for answers that don't exist at this time.**" [Fax cover sheet from Mr. Power to Mr. Rowat, dated September 22, 1993, Committee Doc. 000730, emphasis added.]

Mr. Desmarais added his comments to those of Mr. Power, including a suggestion that the consortium "should be reminded that providing a pleasant place to wait is not the objective of the exercise." [Memorandum from Mr. J.N. Desmarais to Mr. Power dated September 22, 1993, Committee Doc. 000730.]

Nevertheless, fifteen days later the deal closed.

Non-Arms Length Contracts: Skimming the Cream Off the Top

Both Paxport and Claridge defended the deal as fair to Canadian taxpayers, stating that "during the first 9 years of the term of the Lease ... the Partners of T1T2 Limited Partnership receive no cash whatsoever." [See: "Schedule A to the Statement of Claim by T1T2 Limited Partnership Upon Her Majesty The Queen in Right of Canada," para. 1, submitted to the Committee on September 8, 1995 by Mr. Hillel W. Rosen on behalf of T1T2 Limited Partnership; and testimony of Mr. Peter Coughlin, President, Claridge Properties Ltd., *Committee Transcript*, Tuesday, September 1, 1995, Issue No. 17, 17:16.]

This statement ignores the evidence of the numerous side deals by which the consortium members were to benefit from the Pearson Airport redevelopment. It is accurate that *technically* the contracts which surfaced during the Committee's investigations were not with the partners of T1T2 Limited Partnership. They were, however, with related corporate entities -- either parent companies of T1T2 partners, or sister companies, or other companies owned and controlled by the same persons who controlled a T1T2 partner (eg. Mr. Don Matthews and Mr. Jack Matthews).

These contracts would have allowed the consortium members to earn considerably more from Pearson than the 14% negotiated after-tax rate of return found by Deloitte & Touche³⁸. Mr. Stehelin of Deloitte & Touche was very clear in the report which found the 14% rate of return to be reasonable:

"Certain construction management fees to the Matthews Group during the development and other consulting fees for various services to other members of the group are not included in the IRR calculation of 14%. We are ascertaining the total of these amounts on a pre-tax basis and will comment on these under separate cover." [Report from Deloitte & Touche dated August 17, 1993, page 6.]

This further calculation was never done. [Testimony of Mr. Paul Stehelin, *Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:22.] However, Mr. Stehelin testified that under the regime proposed by the consortium, a number of expenses would be "buried in a number called 'management fee.'" [*Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:21.] Other fees, which included development fees and consulting fees to Matthews Group companies, Mr. Stehelin characterized as "abnormal expenses. They weren't presently or directly related to operating the airport." [*Ibid.*] Mr. Stehelin agreed that some of these amounts would be "money to the investors over and above the money they would get as investors in terms of the rate of the return." [*Ibid.*]

The following is a brief summary of the agreements for which evidence was presented to the Committee:

1. The most unusual of these agreements is one dated October 4, 1993, between T1T2 Limited Partnership (signed by both Mr. Peter Coughlin and Mr. Norman Spencer), and Matthews Investments 4 Inc. -- a company that does not appear anywhere else in the documents.³⁹ The document states, in its entirety, that:

"[T1T2 Limited Partnership] hereby agrees to pay to you a consulting fee of \$350,000 per annum for ten (10) years (payable monthly) commencing with the first payment on October 31, 1993.

³⁸ In fact, Mr. Allan Crosbie found that the pre-tax rate of return to the developers, without including these numerous side deals, was 23.6%. This is discussed below.

³⁹ A corporate search revealed that Matthews Investments 4 Inc. was only formed on September 30, 1993 -- barely one week before this \$3.5 million agreement was signed. Mr. Donald Matthews is listed as President/Chairperson, and a Mr. Richard J. Lachcik of Oakville, Ontario is entered as a first director. No other information could be obtained about the company -- its shareholders, its business (if any), or employees (if any).

"This contract may not be terminated for any reason and is assignable and may be assigned by you." [Committee Doc. 001573]

This is an undertaking to pay \$3.5 million as a "consulting fee," but with **absolutely no mention of any consulting, or indeed any other services to be provided.** The "no termination" clause ensures that **the contract could not be terminated if no services were ever provided, let alone if the services were unsatisfactory.**

Senator John Bryden observed during the hearings, "[T]his looks to me very much simply like a promissory note. **I promise to pay \$350,000 per year for 10 years commencing on October 31st.**" [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 28, 28:17, emphasis added.] **And it could be fully assigned, at will, by Matthews Investments 4 Inc. to anyone -- to Mr. Don Matthews, to Mr. Jack Matthews, or theoretically even to a friend.**

2. Matthews Contractors Inc. was engaged as "Construction Manager for the Pearson Terminal Redevelopment Project" by letter dated October 4, 1993 from T1T2 Limited Partnership. That letter is lacking in detail: it notes vaguely that, "The extent of these services and the fees therefore are to be generally as per the proposed agreement previously delivered to you." The referenced agreement was not provided either to the Department of Transport or the Committee. [See: Letter dated October 4, 1993, attached as Exhibit 11 to the Affidavit of John N. Desmarais, No. 3, in the Ontario Court (General Division) litigation between T1T2 Limited Partnership and 2922797 Canada Inc., and Her Majesty the Queen in Right of Canada, Court File No. 94CQ55762.]

According to a corporate search of Matthews Contractors Inc., that company was only formed on September 29, 1993, leading one to speculate whether it was formed for the sole purpose of entering into this contract.

3. Paxport International Inc was to get a minimum of \$4 million over five years from T1T2 to promote Canadian airport development expertise and technology internationally. While apparently unrelated to the management and operation of Pearson Airport, this undertaking was referred to in a covenant from T1T2 in the Industrial Benefits Agreement, one of the Pearson Airport contracts. It would appear that the \$4 million was to come out of the revenue from Pearson Airport -- notwithstanding that its purpose, while ostensibly to benefit Canada, was at bottom to develop new business opportunities for Paxport. [See: Article 3.3 of the *Industrial Benefits Agreement* between T1T2 Limited Partnership and Her Majesty the Queen in Right of Canada, dated October 7, 1993.]

4. Agra Industries Limited had an agreement dated May 15, 1992 with Paxport Management Inc, which provided:

"In consideration of AGRA's participation in the consortium, AGRA will be entitled to, on a preferred basis, as determined by the project manager, perform engineering and related services for performance of the redevelopment of the airport facilities."

Agra Industries Limited was the controlling shareholder in 2895820 Canada Limited, a partner in T1T2, and also the majority shareholder of Allders International Canada Limited, which owned two of the T1T2 partners.

In addition, Allders International Canada Limited had a 25-year lease to operate the duty-free shops at Terminals 1 and 2.

5. Norr Partnership Limited was to perform planning, architectural and engineering services, and overall design co-ordination for T1T2. Norr Partnership Limited was a shareholder of Norr Group Consultants Ltd, which in turn was the owner of 1027777 Ontario Limited, a partner in T1T2.

6. Pearson Airport Management was engaged by T1T2 to manage Terminals 1 and 2. Pearson Airport Management is a partnership with Claridge Holdings Inc. as one of the partners.

7. On October 4, 1993 Bracknell Corporation entered into 2 agreements with T1T2:

- (1) a management and operations agreement; and
- (2) an agreement for the installation of mechanical, electrical and communications cabling.

Bracknell Corporation owned 1045433 Ontario Inc. and 1045434 Ontario Inc., both partners in T1T2.

8. Patrick Brigham, "as a founding member of the Paxport Group" (Mr. Brigham and the Brigham family owned Hartay Enterprises, Inc., a partner in T1T2 Limited Partnership) was granted exclusive rights to provide travel agent services at all three terminals at Pearson Airport. This agreement was dated October 4, 1993, although not accepted by Mr. Brigham until November 10, 1993 -- well after the defeat of the Conservative Government, and indeed after the appointment of Mr. Nixon to review the Pearson Airport deal. [See: Agreement dated October 4, 1993, attached as Exhibit 5 to the Affidavit of John N. Desmarais, No. 3, in the Ontario Court (General

Division) litigation between T1T2 Limited Partnership and 2922797 Canada Inc., and Her Majesty the Queen in Right of Canada, Court File No. 94CQ55762.]

9. Lockheed Air Terminal of Canada Inc. ("LATOC") concluded a "consulting agreement" with T1T2 Limited Partnership, dated October 4, 1993. LATOC owned LAH Limited, the limited partner in T1T2 Limited Partnership. Under this agreement, LATOC was to receive \$450,000 each year for 7 years or until the completion of the redevelopment of Terminals 1 and 2, whichever was later. In exchange, LATOC was to serve as a "consultant" in connection with the management, operation, development and redevelopment of Terminals 1 and 2. [See: Agreement dated October 4, 1993, attached as Exhibit 10 to the Affidavit of John N. Desmarais, No. 3, in the Ontario Court (General Division) litigation between T1T2 Limited Partnership and 2922797 Canada Inc., and Her Majesty the Queen in Right of Canada, Court File No. 94CQ55762.]

These contracts alone would have brought in over \$170 million to these entities, according to their own claims in the pending litigation with the Government of Canada. **This \$170 million would have been over and above the negotiated rate of return that the Government had decided would have been fair for the developers.**

Perhaps the most serious problem with these non-arms length contracts was the essentially blank cheque written by the Government to the developers. **The Government gave up any significant ability to control self-dealing by the consortium.** The Pearson Airport agreements provided only that the Government had a right to receive copies of non-arms length contracts; while the contracts were supposed to be on terms "commercially equivalent to those which could be negotiated with an Arms Length party," no power was given to the Government to reject, to challenge, or to approve the terms of any such agreement. [See: Article 2.5, *Terminals 1 and 2 Complex Development Agreement*.]

The Government did not even ask to exercise its minimal right to review the non-arms-length contracts. The Hon. Jean Corbeil, then Minister of Transport, testified that he had no knowledge of the \$3.5 million contract to Matthews Investments 4 Inc., the only non-arms-length contract he was asked about. The first time he saw that contract was when presented with it during these hearings. [Testimony of the Hon. Jean Corbeil, *Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:91.]

The Committee saw strong evidence of the Government's failure to exercise oversight over the non-arms-length contracts. The negotiating team, which had agreed that the Government would subsidize the airlines' share of the airport operating and management costs, admitted that they simply did not know whether these non-arms-length payments would be included in those costs, and thus subsidized by the Government as well as the

airlines and the travelling public. [Testimony of Mr. John Desmarais, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:83-84.]

Other Unusual Clauses

Mr. Stephen Goudge (legal counsel to Mr. Nixon) expressed concern that the contracts permitted:

"a number of deductions on the issue of gross revenue that, from my perspective after consultations, were unusual. That is, unusual in the sense that provided deductions that would understate what in other circumstances would be the gross rent. For example, rent paid by the Crown, bad debts, and so on." [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:13.]

He later commented on these clauses, noting that Pearson Development Corporation would have been allowed to deduct from its calculations of gross revenues "many generous deductions, unusual ones [such as] rebates and refunds, payments by Her Majesty as occupant of leased premises, bad debts...." [*Id.*, 27:51-52.]

Other terms were also unusual, and these terms "inadequately protected the public interest." [Testimony of Mr. Stephen Goudge, *Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:12.] For example, the agreements, the *raison d'être* of which was to develop Terminals 1 and 2, did not provide for reversion of the terminals to the Crown in the event not all the development took place:

Mr. Goudge: [T]he term of the agreement provides for 57 years, regardless of whether or not the development beyond Stage 1B takes place.... An agreement whose purpose is redevelopment ought to provide, in my judgment, and particularly in this context, that if the development does not proceed, the leasehold interest returns to the Crown. The whole purpose of this was to get the development done.... Why the Crown should permit the property to remain with the lease holder if the development was not going ahead escaped me, particularly with an asset of this importance. [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:12-13.]

Mr. Goudge also found that the remedies given the Government if the developers defaulted on their obligations under the agreements, were seriously deficient. The only remedy provided was for the Government to take the airport back, and to run it. As Mr. Goudge testified:

"The whole object of this was for the Crown to get out of this business and, in the event of default to force an entire reversal of that is something that, because it is so

Draconian, is almost certainly not to be exercised." [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:14.]

Mr. Goudge explained that the government would have the option of stepping in:

"in the middle of a development that was partially completed and try to take over the operation. From my perspective ... that would be a disaster for the Government of Canada. There would be nothing worse than coming into the mess of a development where the developer had walked out.... **The mess for the travelling public and for the Government of Canada couldn't have been worse, in my judgment.**" [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:40-41, emphasis added.]

Other provisions also protected the interests of the developer at the expense of the public interest. For example, the provisions governing the mortgagee's rights to enforce its security under the leasehold mortgage gave very little protection to the Government. The Committee learned that in case of a default under the leasehold mortgage, the mortgagee would acquire extensive rights, with little (if any) power given to the Government to object:

"The mortgagee could enforce the security without a requirement that it complete further stages of construction, and it could then assign the lease to another lender, and the Government of Canada would be left with an operator of the airport over whom the Government of Canada had no control. **In other words, the Government of Canada would be left with not T1T2 but somebody, the identity of whom, the wherewithal of whom the Government of Canada would have no control over.**" [Testimony of Mr. Stephen Goudge, *Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:14, emphasis added.]

The agreement did not give the Government of Canada any power to withhold its consent to the mortgagee's assignment of the lease of the terminals. "All of a sudden the Government of Canada is dealing with a new tenant without any ability to control who the tenant is." [*Ibid.*] That new tenant could be anyone, including even a non-Canadian controlled developer who would not have qualified to submit a proposal for the project under the terms of the Request for Proposals.

The Return to the Investors

The Committee learned that the pre-tax rate of return to investors under the Pearson Airport deal was to be 23.6% -- a rate well in excess of any return the investors could have expected in the market. As a consequence of permitting such a high rate of return, the government would have lost over \$250 million over the term of the lease. Mr. Allan Crosbie, a senior financial analyst with Crosbie & Company, testified:

Mr. Crosbie: Under the deal, the government deal was valued at \$842 million or \$843 million. If the return to the investors had been 17.5, which -- I'll give you some background -- we think is perhaps something they could shoot for --

Senator Bryden: No, I just needed -- Let the figures speak for themselves.

Mr. Crosbie: The government would have got another \$200 million on top of the \$843 million.

Senator Stewart: So they left \$200 million on the table, then.

Mr. Crosbie: Under this, yes, \$200 million, it would appear, could well have been left on the table over 37 years.

Senator Bryden: No, over 57 years that would have been 252?

Mr. Crosbie: Over 57 years that would have been \$252 million -- that's right, about one-quarter of a billion dollars. [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:21.]

Mr. Crosbie also told the Committee that the 23.6% figure could well have been low. First, it did not include or reflect the fees that would have been paid to consortium members under the various non-arms-length contracts -- and the evidence shows that these would have yielded millions of dollars.

Second, **the model used by Transport Canada in assessing the return was not prepared independently by or for Transport Canada, but was prepared by Pearson Development Corporation itself.** [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:22-23.] As Mr. Crosbie noted,

"[I]t's highly unusual for a buyer to present an optimistic model to the seller. The buyer, I think, typically would present quite a conservative model because you're not going to go to a seller and say, 'Geez, look what a great deal I've done.'" [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:23.]

Notably, this was the first time the Committee learned that the Department had used a model provided by the developer.

The Department based its conclusion that the 14% *after-tax* rate of return was reasonable on the opinion of Mr. Paul Stehelin of Deloitte & Touche, set out in a letter dated August 17, 1993. However the Committee learned that, "although the letter was written in August, [Mr. Stehelin] was basing ... it off the higher rates in the spring." [Testimony of Mr. Crosbie, *Committee Transcript*, Monday, November 6, 1995, 1300-7.] The letter was not

updated "to reflect the rates that were closer to the rates that were in place at the time the letter was written." [*Ibid.*]

The Deloitte & Touche report relied on a Price, Waterhouse report in finding the 14% *after tax* rate of return to be reasonable. However, the Committee was told that the Price Waterhouse report had referred to a *pre-tax* rate of return of 11% to 13% as reasonable. [*Id.*, 1300-6.] That figure would have been consistent with the results of a report prepared by DS Marcil for Transport Canada on a different project. In that report, DS Marcil suggested "a pre-tax equity return for the equity investors of 14.5 per cent, slightly more than the Price Waterhouse but in the same general range." [*Ibid.*]

Finally, the projected before-tax equity rate of return on the Terminal 3 project was 14.1 per cent. [*Id.*, 1300-7.]

The evidence is overwhelming that the 23.6% before-tax rate of return was considerably higher than was necessary or appropriate. Mr. Crosbie testified that "the returns may, in fact, be higher than 23.6." [*Id.*, 1300-12.] This return would be increased if one factored in the:

"additional profits potentially to the participants through their involvement in the concessions, the construction and the management fees.... Plus, you have synergies when you put T3 together with T1T2. Transport Canada told us they thought these synergies of putting these two together could be in the order of \$2 million. Plus, you now have virtually a monopoly situation where you have got control of these terminals in the hands of one party ... which creates opportunities in terms of pricing...." [*Committee Transcript*, Monday, November 6, 1995, 1300-11-12.]

The rate of return to the investors under this deal was very generous, and directly at the expense of the travelling public (higher fares) and the Crown (lower rate of return).

VI. SIGNING OF THE CONTRACT

By late August, 1993, the negotiating team had succeeded in resolving the most difficult issues that had divided the parties. [Testimony of Mr. Bill Rowat, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:14.]

On August 27, 1993, the Order in Council was issued, authorizing the Minister of Transport to enter into the agreements on Pearson Airport. [Order in Council, dated August 27, 1993, Committee Doc. 001345.] Mme. Jocelyne Bourgon, then Deputy Minister of Transport, was very clear that the effect of this authorization was to grant the Minister of Transport the "additional power" required in order to sign the agreements, but:

"[T]o have the power to sign is not an obligation to sign It is not a judgment on the circumstances. So to have delegated authority does not force you to exercise it." [Committee Transcript, Thursday, September 14, 1995, Issue No. 19, 19:61, emphasis added.]

On August 30, 1993, the Minister of Transport announced that a "general agreement" had been reached to redevelop and to operate Terminals 1 and 2, and that this would be finalized in the fall. [New Release Communiqué No. 187/93, dated August 30, 1993, Committee Doc. 002269.]

Legal counsel who testified were definite: as of August 30, 1993 -- and indeed, **right up until October 7, 1993 -- there was no contract between the parties.** When he testified, Mr. Robert Green, Q.C., Senior General Counsel, Department of Transport, explained that he had specifically asked that the word "general" be included in the press release to clarify that as of August 30, there was no agreement between the parties:

Mr. Green: ...I do remember asking that the word "general" be put in because I did not -- was not aware that an agreement had been entered into, did not think one had and understood this to be, as Bill [Rowat] already alluded to it, simply a strong statement that the minister wanted to make.

...

Senator Lynch-Staunton: ... What's the difference between a general agreement and an agreement? What is a "general agreement", then?

Mr. Green: As I understood it at the time, the message I was trying to convey to that was simply that there was no agreement. There was maybe an understanding, but I don't know. [Committee Transcript, Monday, October 23, 1995, Issue No. 29, 29:44.]

In fact, the witnesses described how "serious negotiation" continued right up until the signing. Mme. Bourgon testified that, **"We were still negotiating 24 hours before I asked the minister to sign some of the documents."** [*Committee Transcript*, Thursday, September 14, 1993, Issue No. 19, 19:86, emphasis added; see also testimony of Mr. Jacques Pigeon, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:14.]

Mr. John Desmarais of Transport Canada told the Committee how one document was not completed by late September, and in fact, as late as September 20, 1993, the government negotiators were telling the consortium that they would not close the deal until that document was finalized:

"We, at August 27th, did not have a management and operations plan. That was a substantial piece of negotiations during September, for the plan and the agreement itself, and in fact at one point we said, on September 20th, that we weren't willing to close unless that was finalized." [*Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:15.]

The Department of Justice officials explained that the Terminal 1 and 2 transaction was "a one-tier transaction." [Testimony of Mr. Jacques Pigeon, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:9.] In consequence, "parties will sign documents in advance, not with the intent of binding themselves at the moment they sign them but simply as a matter of administrative procedure so that they would be ready for closing, assuming all the other conditions precedent to that closing are met, or the parties otherwise agree to the closing itself." [Testimony of Mr. Robert Green, *Committee Transcript*, Monday, October 23, 1995, Issue No. 29, 29:24.] In other words, as Mme. Bourgon succinctly expressed it: "[I]t is not over until it is over." [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:86.]

Mr. Rowat was emphatic in a letter to our Chairman:

"It was my view at that time, and it is still my view now, that the Pearson Contract was not concluded unless and until all the documents were signed by the parties, including those signed on October 7, 1993, and all necessary release from escrow had taken place, which event occurred only after Peter Coughlin and I had signed the *Authorization to Release Escrowed Documents*." [Letter from Mr. Rowat to Senator Finlay Macdonald, dated September 22, 1995.]

The evidence of the public servants was definite. In their view there was no binding agreement until October 7, 1993. Mr. Stephen Goudge agreed, noting that, "There is no law of 'semi-contract'." [*Committee Transcript*, Thursday, September 28, 1995, Issue No. 27, 27:32.] Mr. Goudge went on to state his legal view that "the contractual rights at issue here speak as of October 7th, not before."

When questioned by Mr. Nelligan regarding whether the government would have been liable for damages if it had not proceeded to close the transaction, Mr. Goudge replied: "We had no detailed discussion ... about that.... My own view would be that to stretch any doctrine of law to take in potential damages other than contract damages in this circumstance would be difficult." [*Id.*, 27:37.]

On September 8, Parliament was dissolved; the election campaign began. At the same time, several news stories appeared in the press, exposing problems with the projected deal and with the process that had been followed. [See: "Response to points raised in the Greg Weston Citizen articles of Saturday, September 25, 1993 and Sunday, September 26, 1993," dated September 28, 1993, Committee Doc. 001266.]

The projected deal became a major issue in the campaign. On October 5, 1993, the Leader of the Opposition, Mr. Jean Chrétien, said publicly: "I challenge the Prime Minister to stop that deal right now.... You don't make a deal like that three weeks before an election when hundreds of millions of dollars are at stake.... I'm proposing a very simple thing -- put it in the fridge for three weeks and let the government that is there deal with it after [the election.]" [Quoted by Patrick Doyle and Bruce Campion-Smith, "Halt deal at airport Chrétien tells PM," *The Toronto Star*, October 6, 1993.]

The next day, Mr. Chrétien was even more explicit. "I'm warning everyone involved: If we become the government, it will be reviewed, and if legislation is needed [to overturn the deal] we will pass legislation." [André Picard and Jane Coutts, "Chrétien attacks Pearson deal," *Globe & Mail*, October 7, 1993.]

When the time came to close the deal in October, Mr. Rowat consulted with his Deputy Minister as to whether or not he should proceed:

Senator Bryden: Is it normal for the Prime Minister to direct a contract to be signed?

Mr. Rowat: These were not normal circumstances. So under normal circumstances, no, it would not.

Senator Bryden: What was different about these circumstances?

Mr. Rowat: There was an election under way, and this was a particularly contentious issue. So in speaking to the deputy minister, Jocelyne Bourgon, she had drawn the conclusion, as had I, that if I were to sign these documents as a senior civil servant at this point in time, I should have very explicit instructions. It was to her and I suppose Glen Shortliffe to sort out exactly how and who should provide

these instructions. [*Committee Transcript*, Thursday, August 3, 1995, Issue No. 10, 10:75-76.]

Mme. Bourgon elaborated on this point, explaining that with the dissolution of Parliament came the need for the public servants to satisfy themselves that indeed the government wished to make the agreement. Accordingly, around the end of September (before submitting the documents to the Minister of Transport for his signature), Mme. Bourgon sought political guidance from her Minister. [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:57.] She described the situation to the Committee:

"After Parliament was dissolved, what happens in terms of conduct for officials is that there is this general rule. It's not a law. There is a general rule that from that point on, you must act with caution. So the question comes, who is going to make a judgment as to whether or not you're cautious. Well, that's not a judgment for officials. You go to your minister or the first minister, the Prime Minister, depending on the circumstances." [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:59.]

Even though an election was underway, the Hon. Jean Corbeil, Minister of Transport, proceeded on October 4 to sign a number of the documents. This was the first step in that Government's attempt to bind its successor to this deal.⁴⁰

After the Minister of Transport had signed some of the documents and before the deal was scheduled to close on October 7, two events occurred which caused Mme. Bourgon to seek explicit direction from the Prime Minister whether or not to proceed. She described what happened:

Mme. Bourgon: Following that, there were two events, additional events, that took place. One of them was you have to remember that this is during the middle of an election campaign. There was a statement by the Leader of the Opposition requesting publicly the Prime Minister to put everything -- I think he used the expression -- in the freezer.... The day after,... on the 6th, I believe there was also a statement by the Leader of the Opposition to the effect that he would wish, should he form the government, to review the approach.

⁴⁰ Some Conservative Committee members suggested that the Government was bound, and liable, as of August 30, 1993, the date of the Order in Council. However, it is clear that under federal statute, the Government is not bound by any contract unless it is signed by the Minister. [See, eg, the *Department of Transport Act*, c. T-18; the *Federal Real Property Act*, S.C. 1991, c. 50.] And in any event, the evidence was unrefuted that in this case, the Pearson Airport Contract was not concluded until *all* the documents had been signed and released from escrow, namely on October 7. [See: Letter from Mr. Rowat to Senator Finlay Macdonald, dated September 22, 1995.]

These two events raised in my mind the need to receive guidance on the appropriateness of proceeding further, which is closure on the 7th, but this time from the Prime Minister. Because the Prime Minister is responsible for the behaviour of government during a period of election. And the call having been made at the level of the Leader of the Opposition, in my mind, it was not sufficient to simply ask guidance from the minister at that point in time. So that was the background.

Now, it's not for the Deputy Minister of Transport to get on the phone and call the Prime Minister and say, "I wish to get guidance." You refer the matter to the clerk, whose job it is to make sure that we respect tradition and values and due process and so on. And when I raised my view with the clerk, the clerk was also of the view that it was appropriate to seek guidance from the Prime Minister. He did and gave me my instruction." [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:59-60.]

Mme. Bourgon told the Committee that the Prime Minister need not have proceeded with the closing.

Senator Tkachuk: The Prime Minister didn't have to sign any contract.

Ms. Bourgon: No.

Senator Tkachuk: What did she have to do?

Ms. Bourgon: She had to indicate what was the wish of the Leader of the Government as to the appropriate behaviour of her government during that period of time....

Senator Tkachuk: So if she would have said "no", then the wishes of the Treasury Board and all the ministers would have been turned down.

Ms. Bourgon: If the Prime Minister had said, "It is the wish of my government to defer agreements of this kind for the next three weeks," then we would have got people together and found all the options possible to give material effect to that wish. [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:89.]

To implement her instructions, on October 7, 1993, Mme. Bourgon faxed a message to Mr. Rowat, with copies to Mr. Shortliffe, Mr. John Tait (Deputy Minister of Justice), and the Hon. J. Corbeil:

- 1) The Prime Minister, the Right Honourable Kim Campbell, has instructed Mr. Glen Shortliffe to proceed with the signature of the

remaining legal documents concerning the transfer of T1/T2 this afternoon at 14 00 hrs.

- 2) The Minister, the Honourable Jean Corbeil, has been informed of this decision and is in agreement.
- 3) You are therefore authorized to sign the relevant documents on behalf of the Crown.
- 4) The above has been reviewed by Mr. Shortliffe and he has confirmed that these are the explicit instructions received from the Prime Minister." [Fax to B. Rowat from J. Bourgon, dated October 7, 1993, Committee Doc. 00092.]

These instructions were implemented. On that day the balance of the documents were signed, and the Pearson Airport Agreements were the result.

But it was clear to public servants that the controversy surrounding this deal was not going to die down. The Committee was shown an unusual exchange of electronic mail among several Treasury Board officials, beginning with a note from Mr. Andy Macdonald to Mr. Mel Cappe, Mr. Ian Clark, Mr. Richard Paton and Mr. Jean-Guy Fleury, dated October 12, 1993:

"At the DM retreat last week, Jocelyne Bourgon asked my advice on a study she was contemplating... a review of the entire decision and advice process in the Pearson Airport decision. She is more than a little concerned that some public servants might get hung out to dry on this one at some future date, and wanted to have a complete file on the entire process. I said that it sounded like a reasonable thing to do, but that I would touch base within the TBS to solicit other reactions from affected parties. What do you think about this proposal?" [Committee Doc. 002068]

Mr. Cappe sent off his assent quickly -- half an hour later:

"Andy, we should prepare a complete file on this. Sid, could you pull our stuff or at least a chronology on it together should the AG or the next gov't decide to do something." [Committee Doc. 002068]

There is an interesting handwritten note on the page, apparently from Mr. Ian Clark:

"I tend to like this. It is going to get public anyway." [Committee Doc. 002068]

And of course, Mr. Clark was correct; it did "get public."

Signing During the Election Campaign

The most outrageous act of the previous Government in this entire story was the decision to enter into the contract after Parliament had been dissolved, and that Government was fighting for its existence in a general election. It was evident by then that the Conservative Government was headed for defeat. If the deal was good, it would still be good three weeks later. Deep suspicions were raised about the virtues of the agreement by the Government's obvious fear that the deal might not be acceptable to a different Government. Otherwise, why did they not agree to wait until after the election to have the deal signed?

The issue of the propriety of Ms. Campbell's decision to make this controversial contract during the election was considered by the Committee. The witnesses confirmed that such action flew in the face of established Canadian practice; one witness stated categorically that Ms. Campbell's actions demonstrated an unprecedented "reckless disregard for propriety." [Testimony of Professor John Wilson, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:15.]

Mme. Bourgon, now Clerk of the Privy Council, testified that it is the practice of the Canadian Government to act with caution during an election. She elaborated:

"I think the general rule of conduct to act with caution during an election means that you would consider factors such as: Is it a transaction that is going to bind future governments? What is the -- are there alternatives? Are there urgencies in the matter? Is there an obligation to act? Is there controversy?" [*Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:100.]

Professor John Wilson, a professor of political science at the University of Waterloo, testified that there is at least a practice in Canada, and possibly even a constitutional convention, that should have restrained the Campbell government from signing the Pearson Airport agreements during the election.

In Australia, this convention is explicit, and in fact, committed to writing. Known as the "caretaker convention," it requires a Government "to avoid implementing major policy initiatives, making appointments of significance **or entering major contracts or undertakings during the caretaker period** [after a dissolution of Parliament]..." [*Committee Transcript*, Monday, September 25, 1995, Issue No. 25, 25:34.]

Professor Wilson analyzed the testimony of Ms. Bourgon on the practice of the Canadian Government during an election period, and observed, "Madam Bourgon effectively

stated the existence, I think, of the caretaker convention in Canada." [*Committee Transcript*, Monday, September 25, 1995, Issue No. 25, 25:14.] He went on:

"It may be impossible to be absolutely certain on the points I want to mention now, but I'm unaware of any examples, and indeed I should be unaware of any examples in the years since the end of the First World War of governments in Canada in the caretaker period behaving with such reckless disregard for propriety as, in my view, Prime Minister Campbell showed when she authorized the final signing of the Pearson Airport Agreements on October 7, 1993.

"The issue was very clearly one of considerable controversy. The then Leader of the Opposition had vowed to cancel the agreement if his party won the election, which ought to have enough, in my view, on the basis of the examples I've described, to stop the process. An enormous amount of public money was involved, and the agreement locked the Government of Canada into a very long-term leasing arrangement which equally should have made it an inappropriate candidate for decision-making in the caretaker period, and it wasn't urgent, as we now know, I understand.

"But most importantly -- and in my particular view of the way in which the system operates I guess I'm bound to say this -- most importantly, I think, the decision was clearly made at a time when the Prime Minister and those around her must have known that her government was likely to be defeated. The Gallup poll published on September 22 showed the Liberals at 37 per cent and the Conservatives at 30 per cent, down from 36 in August. The Gallup poll published a month later, on October 21, put the Conservatives at 16 per cent.

"Now, I don't have to see internal party polls to know that around October 7, midway between those two dates, the government was very likely at 20 per cent, or not very far away from it. Whatever was being said for publication, I don't believe for one minute that the Prime Minister was not aware of that catastrophic political situation. The hard facts of the case must therefore be that she chose to authorize the signing of the Pearson Airport agreements at a time when she knew that she would not be able to take responsibility for the consequences of that decision. And that looks very close to me like the work of a government which has already lost the moral authority to govern. **To say that her decision was a constitutionally inappropriate exercise of power is, in my view, to put it mildly, but in the context of our customs and those of other parliamentary systems it, in my view, is also enough to justify whatever steps have to be taken to terminate the agreement.**" [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:15-16, emphasis added.]

The two other political scientists testifying before the Committee were reluctant to say that Ms. Campbell's actions breached a constitutional convention -- that term is used in

different ways by different authorities. However, Professor Andrew Heard of Simon Fraser University criticized the signing in the middle of the election campaign, saying, "**It's not in keeping with past political practice and it's I think an issue that certainly raises the question of whether it was prudent or not.**" [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:42, emphasis added.] Professor J.R. Mallory of McGill University did not mince his words, describing the signing as "**bizarre and imprudent.**" [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:43, emphasis added.]

Of course, the Canadian electorate was unequivocal in its condemnation of that Government's actions. The Committee saw correspondence sent to Ms. Campbell from citizens in Mississauga, protesting her ministers' "cavalier" attitudes to Mississauga residents, that "had achieved new heights in arrogance." One of those who wrote anticipated the residents' concerns manifested in reports:

"such as... "The Report of Twenty-seven Million Taxpayers watching their Government Give Tory Hacks Canada's only Profitable Airport." You will soon be reading these reports. They will be delivered one at a time into a ballot box." [Letter from Mr. Lawrence Mitoff to the Hon. Garth Turner, dated October 2, 1993, Committee Doc. 002314.]

Mr. Mitoff added a postscript: "Please consider this my resignation from the Progressive Conservative Party. Attached is my membership card."

Mr. Mitoff was not alone. The Progressive Conservative Party of Canada was reduced from one hundred and fifty-two seats to two seats in the House of Commons; and in Ontario, home of Pearson Airport, every one of the Conservative candidates for election was defeated.

VII. REVIEW BY MR. ROBERT NIXON AND CANCELLATION

Consistent with his promise, one of Mr. Chrétien's first acts after the election was to appoint Mr. Robert Nixon, former Ontario Treasurer, on October 28, to review "all factors relating to the agreement between Pearson Development Corporation and Transport Canada for the redevelopment of Terminals 1 and 2 at Lester B. Pearson International Airport; and produce a report by November 30, 1993." [Articles of Agreement, Consulting and Professional Services between Her Majesty the Queen in Right of Canada and Mr. Robert Nixon, Committee Doc. 002348.]

Mr. Nixon engaged Mr. Stephen Goudge, a lawyer with Gowling, Strathy & Henderson, and Mr. Allan Crosbie, a financial adviser with the specialty merchant bank of Crosbie & Company, to assist him in his review.

Mr. Nixon was assigned a difficult task, made more challenging by the time constraints -- time constraints that were necessitated by the new Government's desire to move forward expeditiously with respect to Pearson Airport. (At that time, of course, the Government could not foresee that its actions to implement its chosen policy would be frustrated by the Conservative majority in the Senate.) However it is plain from the evidence that Mr. Nixon and his team were able to identify and to consult enough individuals so as to obtain sufficient insight into the substance and process of the Pearson Airport deal, and to arrive at recommendations for the Prime Minister.⁴¹

Clearly Mr. Nixon and his advisers could not, within one month, meet with all those heard by this Committee over four months. They did meet with representatives of both Claridge and Paxport, Transport Canada officials, community representatives, including representatives of the Toronto LAA, to name a few. They then analyzed the agreements, to ascertain whether or not the provisions were in the best interests of Canada.

This analysis was conducted by Mr. Goudge, an eminent lawyer, who looked at the provisions from a legal perspective, and by Mr. Crosbie, who was able to examine the financial provisions and put them in an appropriate context for Mr. Nixon's consideration. Indeed, this Committee benefited considerably from insights into the substantive agreements provided by Mr. Goudge and Mr. Crosbie.

⁴¹ Mr. Chern Heed, General Manager at Pearson Airport, warned Mr. Nixon during his study that "there were more people dealing with Pearson airport at Ottawa than there were at Pearson." It would have been impossible for Mr. Nixon to meet with everyone involved in the file. [Testimony of Mr. Robert Nixon, *Committee Transcript*, Tuesday, September 26, 1995, Issue No. 25, 25:36.]

Mr. Nixon concluded as follows:

"My review has left me with but one conclusion. To leave in place an inadequate contract, arrived at with such a flawed process and under the shadow of possible political manipulation, is unacceptable. I recommend to you that the contract be cancelled." ["Pearson Airport Review," dated November 29, 1993, Tab "O" of the Committee Briefing Book.]

On December 3, 1993, the Prime Minister of Canada released Mr. Nixon's report to the public, announcing as he did so that the Government would cancel the contract for the privatization of Terminals 1 and 2. [Press Release, Office of the Prime Minister, dated December 3, 1993, Tab "O" of the Committee Briefing Book.]

VIII. ISSUES

A number of issues are raised by this evidence:

1. Why did the Government adopt a "private sector solution" for Terminals 1 and 2 at Pearson Airport?
2. Was there an alternative solution for Pearson?
3. Was the Request for Proposal process consistent with government policy?
4. Was there political interference with the process?
5. Were lobbyists allowed excessive access and influence?
6. Notwithstanding the process, was the final deal in the best interests of Canada?
7. Was it proper for the Government to direct the execution of this controversial deal during the election campaign?

Each of these will be considered below.

IX. CONCLUSIONS

1. Why did the Government adopt a "private sector solution" for Terminals 1 and 2 at Pearson Airport?

The evidence is clear that, as Mr. Glen Shortliffe testified, the decision to privatize Terminals 1 and 2 at Pearson Airport was "a departure from the generally announced LAA policy." The departure was justified by both Mr. Shortliffe and the Hon. Doug Lewis, former Minister of Transport, on the grounds that it was needed "to address what was perceived as a crisis at Pearson." [Testimony of Mr. Glen Shortliffe, *Committee Transcript*, Thursday, July 1, 1995, Issue No. 4, 4:70.]

However, the evidence shows that by the time the Request for Proposals (the "RFP") was issued, there was no crisis at Pearson. The recession had hit the airline business in Canada "like a tidal wave." [Testimony of Mr. Dominic Fiore, Air Canada, *Committee Transcript*, Wednesday, August 16, 1995, Issue No. 12, 12:76.] Increased passenger volumes were nonexistent.

No one wanted the redevelopment to proceed: Air Canada was on the record opposing it, as were Canadian Airlines and the rest of the airline industry. The Air Transport Association of Canada made repeated representations to the Minister of Transport, asking that the Government delay any redevelopment until the recession had ended, passenger traffic had revived, and the airlines could afford the rent increases the redevelopment would entail. These pleas were barely acknowledged, and certainly were not heeded. The Association received a reply to their November 29, 1991 letter to the Minister the following May -- two months after the RFP issued. [Testimony of Mr. Gordon Sinclair, *Committee Transcript*, Thursday, August 17, 1995, Issue No. 13, 13:78.]

Even Claridge, who ultimately controlled TIT2 Limited Partnership, had opposed the issuance of the RFP, saying it was neither needed nor wanted by the industry. They even offered, should their predictions of traffic levels be wrong, to make renovations "at their own cost... in a matter of months, at no cost to the Government [that] would provide ample capacity beyond the year 2000." This offer was not accepted. [Letter from Mr. Peter Coughlin to the Hon. Gilles Loiselle, dated November 13, 1991, Committee Doc. 001137.]

The only advocates for the redevelopment project were the Paxport consortium -- a group lead initially by Mr. Don Matthews, Mr. Jack Matthews, and Mr. Ray Hession: individuals with impeccable connections to the very top of the Conservative Government and throughout the public service, but who are notably lacking in any airport experience. Mr. Jack Matthews told the Committee how he would regularly be

asked, at the beginning of meetings to promote Paxport as a contender for the project, "Jack, what business do you have in the airport business?" He could only point to his rejected proposal for the Terminal 3 project. [Testimony of Mr. Jack Matthews, *Committee Transcript*, Thursday, September 21, 1995, Issue No. 22, 22:130.]

Why did the Government proceed to issue the RFP in March 1992? The answer may have been provided by Mr. Don Blenkarn, Conservative Member of Parliament for Mississauga South. While openly declaring that he was in favour of selling off the airports to pay down the national debt, Mr. Blenkarn wrote to the Hon. Jean Corbeil three days before the RFP was issued, saying, "What comes through to all sorts of people critical of our government is some sort of a quick pay off to friends who want to develop airports.... [The other Mississauga MPs] and I know the close relationships that [a] number of the proponents of airport reorganization and their relationship with our Party and how supportive they have been in the past. In our view, the name of the game is to get elected....[T]he whole proposal at this point does not balance and our detractors clearly know that." [Letter from Mr. Don Blenkarn to the Hon. Jean Corbeil, dated March 13, 1992, Committee Doc. 000996.]

Did the Government have to proceed with the project? Clearly not; as late as November, 1992 -- after the proposals had been evaluated but before the announcement of the selection results -- the Prime Minister had asked the Clerk of the Privy Council to look into bid compensation for the proponents. However, compensation would have covered only the proponents' costs in preparing the proposals; it would not have provided any part of the profit expected to accrue over the life of the lease to the firm with the winning proposal. This option was not pursued; the project continued.

2. Was there an alternative solution for Pearson?

The Toronto Local Airport Authority, known as the Greater Toronto Regional Airports Authority ("GTRAA"), was at all relevant times willing and able to negotiate with the Government to take over Pearson Airport. This approach would have been consistent with the Government's policy for airport management, and consistent with developments at other major airports throughout Canada.

At every stage, however, the GTRAA encountered obstacles placed by the Government. The evidence shows that a different standard was imposed for the GTRAA than was imposed for each of the local airport authorities ("LAA's") in five other major Canadian cities. And the evidence is equally clear that the decisions which created this double standard were made by the Minister of Transport himself.

The Hon. Doug Lewis, then Minister of Transport, could give the Committee only one reason why he did not pursue the LAA option for Pearson: the "crisis" at Pearson demanded

urgent action, and the Government could not wait for the LAA for Pearson. However, as described above, by the time the RFP was issued in March 1992, there was no crisis at Pearson. In fact, the airline industry (including Air Canada and Canadian Airlines) was arguing strenuously against any steps to develop Pearson at that time.

Furthermore, Mr. Michael Farquhar, the Transport Canada official responsible for negotiating airport transfers to all emerging LAA's, testified that by June 1992, there was a group in Toronto with whom Transport officials could discuss airport transfers. [*Committee Transcript*, Tuesday, July 25, 1995, Issue No. 5, 5:79.]

The main excuse given by the Minister of Transport for refusing to recognize the GTRAA was the insistence by the Region of Peel that the Toronto Island Airport be included within the transfer of airports to the GTRAA. But it became clear that this was but an excuse. When the Minister of Transport provided this rationale in a letter to the GTRAA refusing them recognition, officials added a handwritten notation to the permanent file copy: "Notwithstanding the above observations, the Toronto LAA already would appear to meet the government's prerequisites for becoming a LAA consistent with the criteria applied to the first four LAA's." [Committee Doc. 000549]

The evidence shows that a similar difference of opinion between the federal government and a local municipality regarding whether a second local airport ought to be within the jurisdiction of the local LAA had not impeded the transfer of Edmonton International Airport to an LAA in Edmonton. The Minister of Transport "was very familiar with the Edmonton situation." [Testimony of Mr. Michael Farquhar, *Committee Transcript*, Thursday, July 27, 1995, Issue No. 7, 7:49-50.]

Why was the Government so solicitous of the concerns of *one* local municipality (out of 35)? The same Government flatly ignored a strongly worded resolution of the Toronto City Council expressing its "opposition to the privatization of Terminals 1 and 2" and requesting "that the Government of Canada re-open and reverse its decision, permitting further consideration." [Letter to the Rt. Hon. Kim Campbell from Deputy City Clerk, City of Toronto, dated October 18, 1993, Committee Doc. 002086.]

There is extensive evidence that by the time the RFP process was underway, and certainly by the time negotiations began with the developers (May 5, 1993), there was an LAA in place willing and able to negotiate a transfer of Pearson Airport. The excuses given for not proceeding with the Toronto LAA were clearly lacking in substance. The question remains, why did the Government insist upon a different policy for Canada's most profitable airport? The only possible conclusion is that the Government had a different agenda for that airport.

3. *Was the Request for Proposal process consistent with government policy?*

Mr. Stephen Turner, Director, Central Government Services Review Directorate, told the Committee that the Government of Canada procurement process is "founded on three fundamental operating principles: **Competition**, which for us means open bidding; **equal treatment**, which ensures that all suppliers are treated according to the same conditions and evaluated according to the same criteria; and the last one is **openness and transparency**." [*Committee Transcript*, Wednesday, July 1, 1995, Issue No. 3, 3:106, emphasis added.] Mr. Al Clayton, Executive Director, Bureau of Real Property and Material, confirmed that these same principles govern leasing contracts such as the Terminal 1 and 2 deal. [*Committee Transcript*, Wednesday, July 1, 1995, Issue No. 3, 3:107.]

These were not the governing principles of the T1T2 process.

The Transport officials believed an expression of interest stage should be used, as it had been for Terminal 3. [See, eg, "What are the various ways that a developer can be retained?" dated January 8, 1991, Committee Doc. 001063.] **They went so far as to prepare a draft call for expressions of interest.** [Testimony of Mr. Wayne Power, *Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:13, and draft "Call for Expressions of Interest," dated June 5, 1991, Committee Doc. 001060.]

Only Paxport opposed an expression of interest stage; Of the other two known potential bidders, Canadian Airports Limited advocated a two-stage process, while Airport Development Corporation (which became Claridge) opposed the whole redevelopment as unnecessary. [Committee Doc. 001114]

Paxport lobbied hard against an expression of interest stage. The Minister overruled his officials, and ordered that, "There will be a single stage proposal call process, i.e. no Expression of Interest or Qualification stage." [See: Memorandum from L.A. McCoomb to V.W. Barbeau dated August 21, 1991, Committee Doc. 001047.]

At the same time that Paxport was arguing that an expression of interest stage was unnecessary because three interested developers were already known, it was also pressing for the disqualification of the other bidders. Paxport was successful with one -- Canadian Airports Limited may not have qualified because of the Canadian control requirement in the RFP. Happily for Paxport, they were not successful in disqualifying Claridge; that company eventually rescued Paxport from losing the project altogether.

There was abundant evidence that **the Government knew that a 90-day period to respond to the Request for Proposals was inadequate and would deter potential proponents.** Price-Waterhouse recommended that a **six-month period** be used. [See, eg,

Memorandum from Mr. Chern Heed to Mr. V. Barbeau dated October 29, 1991, Committee Doc. 000639.]

Paxport lobbied the Minister heavily for a short response period. Again, the Minister overruled his officials, and ordered, "The RFP will require that proposals be submitted 90 days from release of the RFP." [Memorandum from L.A. McCoomb to V.W. Barbeau, dated August 21, 1991, Committee Doc. 001047.]

The combination of having a one-stage process, and then allowing only 90 days to respond to the RFP, meant that it was impossible for new groups to enter the competition on a level playing field. Mr. Hession testified before the House of Commons Standing Committee on Transport that Paxport found the 90-day period "extremely demanding. I had to create, virtually overnight, a team of 60 people concentrated in a particular office in Toronto, to work seven days a week about 20 hours a day for the entire period, to succeed in getting that proposal submitted." [*Minutes of Proceedings and Evidence of the House of Commons Standing Committee on Transport*, Thursday, May 26, 1994, Issue No. 7, 7: 19.]

If Paxport itself, which had been created for the single purpose of going after this particular project, and had been gearing up for this RFP since 1989, found 90 days almost too demanding, how could any newcomer possibly hope to succeed?

Why did the Government chose not to emulate the process used for Terminal 3 -- which witnesses told the Committee has now become a model of how public proposal calls should be handled -- for Terminals 1 and 2? Witnesses testified that the Terminals 1 and 2 project was much more complicated than the Terminal 3 one, but the contrast in approaches was striking.

While the Terminal 3 project proceeded first with a call for expressions of interest and then an RFP, the Minister insisted personally on a one-stage process for Terminals 1 and 2. While a full seven months elapsed before the call for expressions of interest and the due date for proposals on the RFP for Terminal 3, the Minister directed that there be only 90 days to prepare and file the proposals for Terminals 1 and 2. [See: testimony of Mr. Wayne Power, *Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:18, 38; testimony of Mr. Ed Warrick, *Committee Transcript*, Wednesday, July 1, 1995, Issue No. 3, 3:27, 37.]

The Minister similarly accepted Paxport's representations and overruled his officials with respect to waiting for the results of the environmental assessment review of the runway project.

On May 16, 1991, Mr. Chern Heed was able to say that, "Clear commitments have been made to the public that no steps to expand the capacity of Pearson Airport will be taken until after the results of the environmental assessment review is known." [Memorandum dated May 16, 1991, Committee Doc. 001161.]

Paxport lobbied hard to convince the Minister that there was no need to wait for the results of the environmental assessment. And the August 21, 1991 memorandum records the Minister's explicit direction, "The RFP may be released prior to completion of the EARP review of the Department's proposal to construct new runways at LBPIA." [Memorandum from L.A. McCoomb to V.W. Barbeau, dated August 21, 1991, Committee Doc. 001047.]

The rumour that the Government was going to proceed with the RFP prior to the EARP report was enough to make at least two members of the EARP panel threaten to resign. [Letter from Mr. Peter Coughlin to the Hon. Gilles Loiselle, dated November 13, 1991, Committee Doc. 001137.]

The RFP was issued on March 16, 1992 -- five months before the EARP report was released on November 30, 1992. That report found that there was "no likelihood that passenger aircraft movement demand will reach the levels projected ... for 1996 before the year 2001 and maybe even later; there is no serious and continuing problem of traffic congestion at Pearson at the present." [*Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:17.]

The criteria used to evaluate the proposals were the weightings lobbied for by Paxport. Paxport wanted (understandably) to minimize the weight given to the proponent's financial strength, and to maximize the weight accorded the promised "return to the Crown." [See, e.g., letter from Mr. Hession to Dr. Huguette Labelle, dated January 18, 1991.]

The evaluation criteria -- which were approved by the Minister -- allotted only 5 per cent of the weighting to the proponents' financial qualifications; while of the 40 per cent points assigned to the proponents' business plan, 50.6 per cent was allotted to the proposed return to the Crown. [See: Proposal Evaluation Report, Committee Doc. 001765; testimony of Mr. Ron Lane, *Committee Transcript*, Wednesday, July 26, 1995, Issue No. 6, 6:59-60.]

The evaluation process was severely hampered by not having a proper basis for comparison with what would have happened had Transport Canada undertaken the redevelopment itself. A Transport Canada document noted that "[Paxport's] proposal would imply an attractive financial return to the government.... However, the Evaluation Report has made no comparison of the return to the government under [Paxport's] proposal with a 'business as usual' assumption under a continued government operation of the airport. A so-

called government base case was not undertaken as part of the RFP exercise." [See: "Considerations related to the potential redevelopment of Terminals I and II," dated November 3, 1992, Committee Doc. 001445.]

The Committee learned that it was the Minister who expressly ordered that no such "Crown Construct" base case be prepared. [Memorandum from L.A. McCoomb to V.W. Barbeau, dated August 21, 1991, Committee Doc. 001047.]

It is evident from the Evaluation Report that the Evaluation Committee was well aware that the Paxport plan was precarious, especially when compared with the plan submitted by Claridge. Claridge's Business Plan was described as "a sound, conservative and achievable Business Plan, which recognizes the current financial realities of the airline industry in establishing a pricing strategy (low charges for the short-term, 1 - 8 years or so, rising only after Phase 1 construction is completed in 1998)." [Proposal Evaluation Report, Committee Doc. 001765, p. 90.]

In contrast, "the critical assumption in [Paxport's] Business Plan is that a large portion of the capital costs as well as the payments to the Crown can be passed on to the airlines, and that it will be possible to renegotiate airline leases to conform to their pricing strategies and levels.... Any of these matters could result in [Paxport] having to scale down the scope of the project or to delay redevelopment, particularly Stage 1. They could also cause reductions in payments to the Crown, *as well as bring into question the financial viability of the proposal.*" [Proposal Evaluation Report, Committee Doc. 001765, p. 90.]

Nevertheless, Paxport's proposal was selected as the best overall acceptable proposal. And as anticipated, the failure of Paxport to recognize the current financial realities of the airline industry, and their own lack of a solid financial base, meant that they could not finance their proposal. Within just a few days of the announcement that their proposal had been selected, they were negotiating a merger with Claridge.

One is forced to wonder whether this was not simply a process to ensure that Paxport got "a piece of the action" with funding from Claridge's deep pockets, rather than a true open competition. The entire process, from start to finish, seemed crafted to ensure the selection of Paxport's proposal, against logic, experience and simple common sense. Why select a proposal that on its face required radical increases in airline rents, at a time when the major Canadian airlines were on the verge of financial collapse? Why discourage new competitors by setting the 90-day deadline? And why ignore the financial ability of the proponent to carry out the proposal, in assessing each proposal's merits?

If all this was not calculated to enhance Paxport's chances to win the proposal, then it was an example of bad management: it was a gambler's roll of the dice with Canada's largest and most important gateway to international markets. And it is clear from the evidence where responsibility for these decisions lies -- the Minister(s) of Transport, and the Prime Minister of Canada.

4. Was there political interference with the process?

This was probably one of the most difficult issues before the Committee. Without access to Cabinet or ministerial documents, or discussions between public servants and ministers, it was impossible to learn whether there was any political interference. **However, it was clear from the evidence that there was an unprecedented level of interest taken in this transaction on the part of the Privy Council Office; an Office which received its directions directly from the Prime Minister.** [See, eg: Testimony of Mr. David Broadbent, *Committee Transcript*, Wednesday, August 2, 1995, Issue No. 9, 9:109.]

The Prime Minister seems to have been more attentive to the file than was the Minister of Transport; certainly he was better briefed. [Compare, e.g., testimony of Mr. Glen Shortliffe, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:65-66, with the testimony of the Hon. Jean Corbeil, *Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:24; Memorandum to the Prime Minister from Mr. Shortliffe, dated December 4, 1992, Committee Doc. 002184, with testimony of the Hon. Jean Corbeil, *Committee Transcript*, Wednesday, September 20, 1995, Issue No. 21, 21:24.]

The Prime Minister was advised of the numerous concerns of Transport Canada and others about proceeding with the project in November 1992 -- including "concern with the inequity of the arrangement (over \$1.0 billion in revenue in exchange for only \$150 million in work," and "the negative impact it would have on... the deficit" -- yet the project went forward. **It is notable that the memorandum from Mr. Shortliffe to the Prime Minister of November 16, 1992 does not present a single reason why the project should proceed.** [See: Memorandum to the Prime Minister from Mr. Shortliffe dated November 16, 1992, Committee Doc. 002188.]

The Clerk of the Privy Council, Mr. Glen Shortliffe, held weekly meetings "to keep every one on track." [Memorandum from Mr. Paul Gou to Mr. Al Clayton, dated May 6, 1993, Committee Doc. 000417.] And he was reporting back to the Prime Minister with detailed up-dates on the status of the negotiations.

The Committee was given written memoranda from Mr. Shortliffe to the Prime Minister documenting briefings given every two weeks, and sometimes more often. When asked about this "truly unbelievable" level of interest displayed by the Privy Council

Office, Mr. David Broadbent agreed: "I can't think of a comparable situation either." [Committee Transcript, Wednesday, August 2, 1995, Issue No 9, 9:109.]

The Committee saw extensive evidence of "strong pressure" on officials to conclude the Pearson agreements by May 31, 1993. [See, eg, Memorandum from Ms. Carole Swan to Mr. Sid Gershberg, dated May 10, 1993, Committee Doc 00272] Memoranda from the Department of Finance noted that "Transport officials have been working at a furious pace to meet the goal of signing final agreements by the end of May." **The officials warned that the insistence on meeting this deadline had its cost: "No doubt, PDC feels it has an upper hand in negotiations."** [Memorandum from Mr. Robert Fonberg to Mr. Michael Francino, dated May 17, 1993, Committee Doc. 002072.]

The pressured pace of the negotiations worried officials: "Within weeks, the government will be bound by the terms of a 57 year lease.... We are concerned that PDC will soon be in a position to charge "monopolistic" fees.... Clearly, if this deal stands, a communications plan should be developed which defends the higher prices and ground rents." [Memorandum from Mr. Robert Fonberg to Mr. Michael Francino, dated May 17, 1993, Committee Doc. 002072, emphasis in original document.]

The Committee learned that this pressure came directly from the Prime Minister; he was determined to get the deal concluded before he relinquished his position to Ms. Campbell. [See, eg, testimony of Mr. Glen Shortliffe, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:74.] Eventually, even Mr. Mulroney had to accept the fact that he could not push the deal through before leaving office. Mr. Shortliffe reported to him that "delays by Paxport and Claridge in clarifying the status of Mergeco have slowed progress on the file." [Memorandum to the Prime Minister dated April 8, 1993, Committee Doc. 002097.]

The file was passed to the Rt. Hon Kim Campbell. She too showed no qualms about intervening to get the deal done before the election in October 1993. Two and a half weeks before the election, when it was well known from the polls that the Conservatives were headed for defeat, she personally directed the Chief Negotiator to proceed with the execution of the agreements.

The Committee saw other evidence of pressure exerted from the Prime Minister's Office. A handwritten memorandum of a meeting on June 14, 1991 with Mr. Richard Lelay, Chief of Staff to then Minister of Transport, the Hon. Jean Corbeil, noted: **"Real issue is delinking: pressure tremendous, PMO down."** [Committee Doc. 000585.] That memo also notes: **"Issue is can dept. put it together so that it doesn't blow up on everyone!!"**

The Prime Minister did not shrink from letting the Clerk of the Privy Council, Mr. Glen Shortliffe, know that he wanted his friends **"to get a piece of the action."** [Testimony of Mr. Shortliffe, *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:65.] And this is what happened: within a matter of days after the announcement that the Paxport proposal had been selected, Paxport and Claridge were discussing a merger. **And the merger was described in internal Transport documents as "a product of PCO/politicians."** [Meeting Notes of a March 18, 1993 meeting, Committee Doc. 00007.]

Inevitably Mr. Mulroney's activities in a similar lease negotiation in 1988 come to mind, where the Ontario Court of Justice found that several "extraordinary" things occurred⁴²:

"Frustrated by the progress of negotiations, John Bitove Sr. ("Bitove Sr."), the Chairman of Bitove Corporation, did an extraordinary thing. He called a political friend, the then Prime Minister, Brian Mulroney, and sought his intervention in this matter. Not many Canadian citizens have direct access to the Prime Minister and can have his ear over complaints about the pace and course of negotiations with a government department. But 1988 was an election year and Bitove Sr. was a significant fund-raiser for the Conservative Party. It is even more extraordinary that the Prime Minister would become involved in what seemed to be essentially private commercial negotiations. However, as a result of this initiative by Bitove Sr., the Prime Minister contacted Glenn Shortliffe, the Deputy Minister of the Ministry of Transportation and Communications ("Shortliffe") and advised him to resolve the problem. Shortliffe immediately removed the existing negotiating group at Transport Canada." *Canada (Attorney-General) v. Bitove Corp.*, [1995] O.J. No. 2627, Court File No. B31/94A, Ontario Court of Justice, September 14, 1995 (Lederman, J.), para. 50.

In the Pearson case, complaints from Paxport about the pace of negotiations resulted in Mr. Victor Barbeau being removed from his responsibilities as Assistant Deputy Minister, Airports, and sent home on "gardening leave." Indeed, the government team was almost completely different at the end than it was at the beginning: over the life of the deal, Transport Canada went through three Ministers, three Deputy Ministers, and four Chief Negotiators. This resulted in a striking lack of continuity. One is forced to ask whether personnel were changed with a view to finding someone who would make the deal "happen."

⁴² Just as Mr. Shortliffe attempted to downplay the import of Mr. Mulroney's interventions in the Pearson deal, so did he go to great lengths to disagree with the Court's findings in the *Bitove* case. The parallels -- and pattern of behaviour -- remain striking.

An internal Paxport memorandum reported complaints heard from a Transport Canada official "about the political interference in the process. [The official] bemoaned that the government, having made a decision about the future of the terminals, didn't sit back and allow the public servants to get on with the process in an orderly fashion 'just like Terminal 3'." [Memorandum entitled "Coordination with Transport Canada at LBPIA," from Mr. Dale Nankivell to Mr. Jack Matthews, dated April 15, 1993, Committee Doc. 001104.]

That the Minister of Transport flatly overruled advice from his public servants on numerous occasions is well documented -- refusing to call for "expressions of interest," proceeding to issue the RFP without waiting for the results of the environmental assessment review panel on runways, insisting on a 90-day response period for the RFP, and refusing to prepare a "Crown construct" base case scenario for use in assessing the true value to the Crown of the proposals. [See, eg, Memorandum from L.A. McCoomb to V.W. Barbeau dated August 21, 1991, Committee Doc. 001047.]

These interventions did not end with the conclusion of the RFP process. There were a number of issues during the final negotiations on which the consortium made certain demands. Though Transport officials recommended strongly against their acceptance, the Minister directed that the questionable terms be accepted. These included the \$33 million deferral of rent to the government, and the passenger diversion guarantee.

The public servants could only keep notes, to protect themselves from being "hung out to dry." [E-Mail from Mr. Andy Macdonald to Mr. Mel Cappe and three others, dated October 12, 1993, Committee Doc. 002068.] As early as June 17, 1991, internal memoranda were noting: "Paper trail - Min[ister] can overrule us ... but audit trail on decisions." [Memorandum of meeting dated June 17, 1991, Committee Doc. 000585]

Mr. Barbeau, when asked whether the Request for Proposal process for the Terminal 1 and 2 project was unusual, stated:

"Is it unusual? Again, this calls for a value judgment on my part and I can't pronounce myself on that. What is normal, abnormal, usual, unusual, the fact of the matter is we had, as public servants, direction from the government to do things in a certain way, and that's what we did." [*Committee Transcript*, Tuesday, July 11, 1995, Issue No. 2, 2:69.]

5. *Were lobbyists allowed excessive access and influence?*

While it is always difficult to specify with any certainty how much lobbying is acceptable, and at what point it becomes excessive, in this case the Committee saw clear evidence of extraordinary influence by those lobbying the Government, and of extraordinary rewards from the private sector to lobbyists -- all costs that would be claimed back, before profit, from Pearson revenues. In particular:

- Mr. Hession conducted a carefully choreographed lobbying assault on everyone who could in any way be helpful or relevant to Paxport winning the Pearson contract. His diaries for 1990 - September, 1993 [the only diaries produced for the Committee] are filled with lunches and dinners at the Rideau Club, Hy's Steak House and the Parliamentary Restaurant, with golf games, as well as dozens of meetings with Cabinet Ministers, their political staff, chiefs of staff to the Prime Minister, as well as persons reputed to be close to Prime Minister Mulroney, persons such as Mr. Sam Wakem (also a law partner of Mr. Gordon Baker, the lawyer for the Matthews Group), the Hon. Guy Charbonneau, and Dr. Fred Doucet, who later himself became a registered lobbyist for Paxport.
- Mr. Hession engaged a team of lobbyists, headed by Mr. Bill Neville, to assist in this campaign. Mr. Neville was also on retainer throughout this period from Air Canada, and then, while still invoicing Paxport for lobbying services, headed Ms. Campbell's transition team, which moved key personnel involved in the Pearson file.
- Mr. Hession recruited Mr. Andy Pascoe to join his team of lobbyists. Mr. Pascoe formerly was the individual on Transport Minister Lewis' staff who was responsible for the Pearson redevelopment file. He saw or had access to all the unsolicited proposals submitted for the Terminal 1 and 2 project. As a representative of the Minister's office, he attended meetings with Paxport's competitors and Transport Canada officials. Thus he had access to extensive confidential information about Paxport's competition and what they would likely be proposing for the Airport, as well as confidential information about the concerns and priorities of Transport Canada. And he joined Paxport just before the RFP issued -- precisely when that information would have been most valuable to Paxport and its principals.
- Paxport lobbyists were able to obtain "full debriefings" of senior Cabinet Committee meetings that impacted directly on the Pearson project. The proceedings of these committees are supposed to be kept secret, for at least 20 years. But Mr. Hession revealed that it was "not uncommon" for Paxport to receive such

information. He seemed genuinely surprised that we thought this extraordinary and shocking -- and his surprise at our reaction itself speaks volumes.

- Paxport entered into two contracts with Dr. Fred Doucet, a long time close personal friend and senior staff member of Prime Minister Mulroney. Those contracts would have paid Dr. Doucet over \$2 million in lobbying fees, and they were contingent on Paxport signing the Pearson contracts.
- Paxport entered into a contract with Mr. Hession to pay him a "post-employment package" of \$83,750 each year for the rest of his life. If he died before his wife, she would receive \$41,875 each year for the rest of her life. This is a generous pension for four years lobbying -- and the money would have come right out of Pearson revenues.

The effectiveness of this lobbying campaign is evident throughout this report. **Paxport lobbied successfully for the Government to ignore the advice of the public servants, and obtained a single-stage process (no expressions of interest); an RFP with a short response period (90 days rather than the recommended 6 months); an RFP in advance of the EARP report; bidder qualifications in the RFP so as to disqualify one of its most serious competitors; emphasis for the "return to the Crown" in evaluating the proposals, and minimal weight for the proponent's qualifications to carry out the proposal, financial or otherwise; and then, when the Deputy Minister refused to direct officials to begin negotiations with Paxport after Deloitte & Touche found they could not finance their proposal, "lobbyists were abuzz" and persuaded the Minister of Transport, in effect, to direct the result.**

We can understand the lobbyists' efforts to represent the interests of their clients forcefully. But we strongly object to the fact that the Government was prepared to change public policy and make new rules in response to these representations, often against the considered judgment of public servants, against good business judgment, and finally, against the best interests of the country. This is **not** the process the Government of Canada should have followed in deciding the fate of Canada's largest airport -- and in negotiating a deal that would last 57 years.

6. *Notwithstanding the process, was the final deal in the best interests of Canada?*

While it is difficult to dismiss the defects in the process, the final deal must be evaluated objectively, on its merits. Serious questions remain regarding the terms of the final deal. These questions more than justify a decision to cancel the agreements.

The Committee heard undisputed evidence that the Government was relying on out-of-date information when it concluded that the rate of return to the consortium under the final deal was fair and reasonable. For example, Deloitte & Touche's August 17, 1993 report that found the 14% after-tax return was fair and reasonable, was based on "the higher rates in the spring," and had not been updated to reflect the interest rates that were in place when the letter was written. [Testimony of Mr. Allan Crosbie, *Committee Transcript*, Monday, November 6, 1993, 1300-7.]

The Deloitte & Touche report also relied on a Price Waterhouse report when it concluded that an after-tax return of 12 to 14% was reasonable. However, the Price Waterhouse report was referring to a *pre-tax* rate of return of 11 to 13%. And this would have been consistent with other studies, such as that of D.S. Marcil prepared for another Transport Canada study, which found a pre-tax rate of return of 14.5% to be reasonable. [See: Testimony of Mr. Allan Crosbie, *Committee Transcript*, Monday, November 6, 1993, 1300-6-7.]

In fact, the pre-tax rate of return in the Terminal 1 and 2 project was 23.6% -- substantially higher than the rates found to be reasonable in these studies. And even this high figure did not tell the whole story. It did not reflect the numerous side deals from which the members of the consortium were going to enrich themselves.

The non-arms length agreements were of significant concern for several reasons: (1) they added up to millions of dollars of Pearson revenues that were to be skimmed off the top by consortium members; (2) the consortium members were noticeably reluctant to disclose information about these contracts -- officials had to try to piece them together, and fix each one within the complex web of related companies; indeed, Deloitte & Touche reported frankly that they were unable to obtain information about these contracts, and therefore had not reflected their yield in the rate of return; and (3) the Government gave away any effective right to control this self-dealing by consortium members.

Government documents produced for the Committee indicated that "Mergeco is well insulated from any increase in construction costs; as well, there is little incentive for them to save in construction costs." [See: "Comments on Sensitivity Analysis To-Date," May 31, 1993, Committee Doc. 00212.] This is particularly disconcerting when one realizes that

Matthews companies were retained to do the construction. So, Mr. Matthews and company had "little incentive" to exercise restraint or fiscal responsibility in performing the construction services. They would get paid in full for this work (however excessive), plus take home their share of the 23.6% profit return.

And while some of the non-arms length contracts may have been fair and reasonable, others were patently excessive, inappropriate, and would not be acceptable in any usual business transaction.

For example, there was the one-page contract, signed on October 4, 1993, whereby T1T2 Limited Partnership promised to pay \$3.5 million to Matthews Investments 4 Inc. -- a company that does not appear anywhere else in the records, and about which we could find out very little, except that Mr. Don Matthews is the President/Chairperson. This money was labelled a "consulting fee," but it could have been called anything, including a gift: there were no obligations placed on Matthews Investments 4 Inc. to do anything to earn this money. The contract was very clear that it could not be cancelled or terminated for any reason. It could, however, be fully assigned by Matthews Investments 4 Inc., so that Mr. Matthews could assign the \$3.5 million to anyone -- himself, his son, or a particularly helpful friend. Yet this was a contract to be paid out of Pearson revenues, supposedly as part of the redevelopment project.

Other non-arms length contracts included a \$4 million fee to Paxport International, so that Paxport International could promote Canadian airport development expertise and technology internationally. In other words, Pearson Airport was to subsidize Paxport's self-promotion for other contracts in the world market.

In addition, there were contracts to non-arms length parties to serve as a "consultant" in connection with the management, operation and redevelopment of Terminals 1 and 2 -- precisely the services, one would have thought, the consortium was undertaking to provide in exchange for their 23.6% return.

The list goes on and on. (These contracts are enumerated in greater detail in the report's description of evidence.) And the bottom line is clear: millions of dollars of Pearson revenues would have gone to enrich individuals and companies undertaking activities that should not have been paid for by Pearson airport, that is, by the travelling public.

Other aspects of the final deal, too, were not in Canada's best interest. The Government, having accepted Paxport's proposal because it offered the best return to the Crown, promptly agreed to reduce this return, and not just once but twice. First, it agreed to defer \$33 million in rent for the first three years, even though officials warned that there was

"no source of funds" to make up this loss for the Government. [See: Memorandum to Mr. Glen Shortliffe from Mr. Bill Rowat, dated May 25, 1993, Committee Doc. 002194.] Then, the Government agreed to reduce its ground rents by 15%, to enable the consortium to pass these savings on to the airlines, and cushion them from the rent hikes required by the proposal.

Again: the problem of the rent hikes to the airline industry was known and anticipated at the time of the Evaluation Report. It was a problem that would have been avoided by the competing Claridge proposal. So we have a situation where the Government selected a particular proposal because of the high rents promised the Crown; those high rents were dependent on raising the costs to an already-strapped airline industry; and the Government agreed to reduce its rents, to help that industry afford this proposal. **It certainly appears that if the Government was determined to proceed to privatize Terminals 1 and 2, the Government, the airline industry, and the travelling public would have been better off accepting the competing Claridge proposal over the Paxport one from the very beginning.**

Did the Government wilfully ignore market conditions in the airline industry, and the likely impact that would have upon the proposal and the return to the Crown? The Prime Minister had been warned, back on December 4, 1992, that Paxport could learn "in a matter of weeks ... that their proposal is not workable under current circumstances in the airline industry." [See: Memorandum for the Prime Minister from Mr. Glen Shortliffe, dated December 4, 1992, Committee Doc. 002184.] Or, did the Government have another agenda, another reason to select the Paxport proposal?

The Government also agreed -- again, against the strong representations of its officials -- that it would not divert traffic away from Pearson, and it would not allow any airport facility to be developed within a 75-kilometre radius of Pearson, until the volume of passenger traffic at Pearson reached 33 million. The only circumstances in which the Government could take such action would be if it compensated the developers, or allowed it access to Area 4, a section at Pearson that had been specifically excluded from the project.

Public service memoranda warned that the "[p]robability is high that traffic diversions which would drop traffic below the 33 M threshold will be necessary," and that, "Crown's financial exposure would be high (in order of \$100M NPV over 57 years of lease.)" ["Diversion Threshold/Capacity Guarantee," Committee Doc. 002008.]

Thus, the Government continued to insulate the consortium from any risk associated with the development, while cementing its monopoly hold on the southern Ontario airways. Not only would they control the whole of Pearson Airport (including

potentially Area 4), but they had a powerful means to prevent any competition from other airports in the area.

Other issues of concern in the agreements related to the substantial power given the developers to commit "minor breaches" of the agreements. The only remedy given the Crown in the event of a default was to step in and take over the entire airport. This is not the usual remedy clause; large contracts like this usually provide a range of remedies, for use depending on the circumstances. And having extricated themselves from the airport business, the Government would not likely be able to step easily into the breach and return the airport to smooth operation. This fact would have given the consortium considerable leverage in the event it wanted to change certain provisions, or not live up to its full obligations.

In the event the consortium defaulted on its mortgage, and the mortgagee enforced its security by taking over the airport, the Government again was left with little in the way of recourse. It had none of the customary rights to approve a third party assignee of the lease. So that the bank or other security-holder could simply choose to install anyone -- a company with no track record, or a company with no Canadian ownership or base -- and the Government would be unable to prevent it. And the lease was for 57 years.

7. Was it proper for the Government to direct the execution of this controversial deal during the election campaign?

The evidence was absolutely clear that until October 7, 1993, when the final documents were executed, there was no contract between the parties. Indeed, negotiations continued until 24 hours before the Minister of Transport signed certain of the documents, on October 4, 1993 -- only three weeks before election day.

The Committee learned that the general rule of conduct that is observed after Parliament has been dissolved is to act with caution. One "would consider factors such as: Is it a transaction that is going to bind future governments? ... [A]re there alternatives? Are there urgencies in the matter? Is there an obligation to act? Is there controversy?" [Testimony of Jocelyne Bourgon, *Committee Transcript*, Thursday, September 14, 1995, Issue No. 19, 19:100.]

By our constitution, the Executive of the Government is responsible to Parliament, but after the House of Commons has been dissolved, and before another has been elected, there is no Parliament to which to be responsible. As the Committee was told, this fact causes governments to act with "caution" during an election.

Should the Pearson Airport deal have been treated with "caution"? This was a major deal. It was unprecedented. It was binding for 57 years. It was highly controversial.

The argument that it could always be cancelled simply serves to remind us of the fact that when the Chrétien Government did cancel it, suits for hundreds of millions of dollars were launched, which suits now advance through the law courts while Bill C-22, which would limit any recovery to actual costs incurred, is being refused passage by the Progressive Conservative members in the Senate.

Could the making of the contract have been put off until after the election? As far as the public good was concerned, there was no urgency. From the viewpoint of the public, October was no more advantageous than November. Indeed, logic would suggest that the Progressive Conservative Government, out of respect for constitutional practice, would have put off making the contract until November if it had expected to win the election. Logic would suggest that it was the expectation that the Conservatives would lose the election that caused the Government to violate the constitutional practice, and thus to show contempt for the underlying principles of responsible government.

With regard to the violation of this practice in entering into the Pearson Airport Agreements, Professor John Wilson was clear and emphatic. [*Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:45.] He did not mince his words. He characterized Prime Minister Campbell's actions as evincing "a reckless disregard for propriety," and went on: "To say that her decision was a constitutionally inappropriate exercise of power is, in my view, to put it mildly, but in the context of our customs and those of other parliamentary systems it, in my view, is also enough to justify whatever steps have to be taken to terminate the agreement." [*Id.*, 24:15-16.]

The Committee learned that in Australia, there is a written constitutional convention known as the "caretaker convention," which expressly requires a Government "to avoid implementing major policy initiatives, making appointments of significance or entering major contracts or undertakings during the caretaker period [when Parliament has been dissolved and an election is underway] and to avoid involving departmental officers in election activities." [Submission of Professor John Wilson, read at *Committee Transcript*, Monday, September 25, 1995, Issue No. 24, 24:34.]

The Committee heard strong evidence that, historically, the Canadian Government has in practice observed these same principles. We believe that the Government of Canada should give serious consideration to expressly adopting this Australian convention as a convention to guide and bind the actions of a government during an election period.

Conclusion

It was apparent throughout these hearings that the Conservative majority on this Committee was focusing, almost to the exclusion of everything else, on the Nixon report. They set out to establish that the Nixon Report was less accurate or complete than it might have been. Their hope was that by doing so, they would then be able to draw the conclusion that the Pearson Airport Agreements should not have been cancelled.

The strategy of the Conservative majority on the Committee did not work. In fact, the study by the Committee has shown the reverse to be true.

The evidence brought before the Committee, as described in this Report, has demonstrated that this was a bad deal for Canada, brought about by a process that was seriously flawed from beginning to end. With or without a Nixon Report, the Prime Minister was clearly justified in cancelling the Pearson Airport Agreements, because these agreements were not in the best interests of Canadian taxpayers and the air travelling public.

The terms of the deals could not be allowed to stand. There is no justification for an agreement that gave developers not only an exorbitant rate of return, but also millions of extra dollars through sweetheart side deals, at the expense of the Government, which agreed to reduce its own revenue not just once but twice -- and that at a time when government spending was being severely reduced, and all Canadians were being asked to accept less in government support.

The Canadian public knew this deal was wrong. They spoke with great eloquence at the ballot box, particularly those Canadians living in Ontario. This inquiry has only confirmed what the electorate knew: this deal had to be cancelled, so that Pearson Airport's needs could properly be addressed, in a manner appropriate and consistent with the public interest.

The Power to Send for Persons, Papers and Records: Theory, Practice and Problems (Report of the Chairman and the Deputy-Chairman)¹

On May 4th, 1995, the Special Senate Committee on the Pearson Airport Agreements was established. The mandate of the Committee was to examine and report upon all matters concerning the policies and negotiations leading up to, and including, the agreements respecting the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport and the circumstances relating to the cancellation of the agreements.

One of the powers given to the Pearson Special Committee by the Senate was the "power to send for persons, papers and records".² This power is central to the ability of the Committee to discharge its responsibility of conducting a complete and thorough inquiry into Pearson agreements. Without access to all relevant information, the Committee simply would not be able to carry out the mandate it had been given by the Senate.

Part One of this paper examines the nature and scope of the powers of parliamentary committees and the manner in which those powers have traditionally been exercised. Part Two provides an overview of the process whereby documents were made available to the Pearson Committee. The categories of information that were withheld from the Committee and the reasons given by government officials for doing so are also reviewed. The last part of the paper examines the frustrations and difficulties encountered by the Pearson Committee in its efforts to obtain full disclosure of all relevant information and concludes with a list of recommendations.

This paper is prepared in the hope that members of future parliamentary committees will benefit from the experiences of the Pearson Committee and that a better understanding and a greater measure of respect for the powers of parliamentary committees will be achieved in the future.

¹ The conclusions and recommendations of this Report does not necessarily reflect the views of all Members of the Special Committee.

² *Minutes of the Proceedings of the Senate*, May 4, 1995, at 930.

Part One: The Theory

The right of the Senate and the House of Commons to institute inquiries is fundamental to the parliamentary committee process. This right forms an integral part of the *lex parliamenti* or law of Parliament. As Diane Davidson, general legal counsel for the House of Commons, observes, parliamentary committees are empowered by either the House and/or the Senate: "to examine and inquire into matters referred to them on behalf of the respective Houses, where it would, for obvious reasons, be impractical for the parent bodies themselves to operate".³ Parliamentary committees are thus an extension of either the House of Commons or the Senate and enjoy the same extensive privileges, immunities and powers given to the two Houses and its members⁴ under the constitution⁵ and the *Parliament of Canada Act*⁶.

³ "Presentation of General Legal Counsel to the Standing Joint Committee for the Scrutiny of Regulations on the Powers of Parliamentary Committees" (Ottawa: House of Commons, 16 November, 1994) at 1; reproduced as "The Powers of Parliamentary Committees", *Canadian Parliamentary Review*, Spring 1995.

⁴ Special Senate committees, such as the Pearson Committee, do not automatically enjoy the same broad powers of Senate standing committees. Pursuant to Rule 94 of the *Rules of the Senate of Canada*, July 1993, the Senate, when appointing a special committee, indicates the powers to be exercised and the duties to be undertaken by the special committee. For a list of the powers given to the Pearson Committee, see *Minutes of the Proceedings of the Senate*, May 4th, 1995 at 929-30.

⁵ Section 18 of the *Constitution Act, 1867* states:

The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof.

⁶ Section 4 of the *Parliament of Canada Act*, R.S.C. 1985, c. P-1, states:

The Senate and the House of Commons, respectively, and the members thereof hold, enjoy and exercise (a) such and the like privileges, immunities and powers as, at the time of the passing of the *Constitution Act, 1876*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof, in so far as is consistent with that Act; and (b) such privileges, immunities and powers as are defined by Act of the Parliament of Canada, not exceeding those, at the time of the passing of the act, held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof.

The powers of standing committees are set out in Rule 91 of the *Senate Rules*⁷ and in Standing Order 108(1) of the House of Commons⁸. Ms. Davidson comments on the importance of these two provisions which:

... include the innocuously-stated authority to "send for persons, papers and records." No distinctions are made between different types of documents or categories of witnesses. The very simplicity of the words granting this authority would appear to belie the strength of the power thereby delegated. When coupled with the rights a committee enjoys as a constituent part of Parliament these are very full powers indeed.

What these grants of power mean, of course, is that, provided a committee's inquiry is related to a subject-matter within Parliament's competence and is also within the committee's own orders of reference, Committees have *virtually unlimited powers to compel the attendance of witnesses and to order the production of documents*. (emphasis added)⁹

Support for this position can be found in a ruling made by the Speaker of the House of Commons in March, 1987:

I think it is important to emphasize, in case there should be any misconception in any quarter concerning the powers and functions of parliamentary committees, that committees appointed by this House are entitled to exercise all or any of the powers that this House delegates to them. ... The powers of standing committees to initiate investigations have recently been extended in the spirit of parliamentary reform. ... The scope of operations of standing committees has thus been considerably widened and the power to summon public servants as witnesses is essential to the effective

⁷ Rule 91 states:

A standing committee shall be empowered to inquire into and report upon such matters as are referred to it from time to time by the Senate, and shall be authorized to send for persons, papers and records, whenever required, and to print from day to day such papers and evidence as may be ordered by it.

⁸ Standing Order 108.1(a) states:

Standing committees shall be severally empowered to examine and enquire into all such matters as may be referred to them by the House, to report from time to time and to print a brief appendix to any report, after the signature of the Chairman, containing such opinions or recommendations, dissenting from the report of supplementary to it, as may be proposed by committee members, and except when the House otherwise orders, to send for persons, papers and records, to sit while the House is sitting, to sit during periods when the House stands adjourned, to sit jointly with other standing committees, to print from day to day such papers and evidence as may be ordered by them, and to delegate to subcommittees all or any of their powers except the power to report directly to the House.

⁹ *Supra*, note 2 at 2.

performance of their tasks. It can be expected that *this power will be used more, not less, frequently in the future*, and I think it is salutary to alert all those concerned to this fact of parliamentary life. (emphasis added)¹⁰

A witness appearing before a parliamentary committee is bound to answer all questions put to him or her and cannot be excused on such grounds as solicitor-client privilege, an oath not to disclose information has been given, or responding would risk self-incrimination. A witness, however, may appeal to the chair and give reasons as to why the information requested should not be disclosed.¹¹ In such circumstances, committees will often endeavour to strike a compromise whereby the desired information is obtained in a manner that still respects the concerns of the witness. An example of such a compromise would be to consider the desired information *in camera*. In the final analysis, however, "witnesses must rely on the collective common sense of the members of the committee and their good graces".¹²

Where a committee's request for documents is refused and the committee, after having reviewed the reasons given for the refusal, still insists on disclosure, the committee may report the matter to the Senate or the House. Final determination as to if and how an order for production is to be enforced is left up to the Senate or the House itself.¹³

¹⁰ *House of Commons Debates*, March 17, 1987, at 4265. Attached as an appendix to Ms. Davidson's Presentation to the Standing Joint Committee Scrutiny of Regulations on November 16, 1994, *supra*, note 2.

¹¹ Charles Gordon (ed.), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, (20th ed.) (London: Butterworths, 1991) at 746-747.

¹² Joseph Maingot, *Parliamentary Privilege in Canada* (Toronto: Butterworths, 1982) at 163.

¹³ Arthur Beauchesne, *Beauchesne's Parliamentary Rules & Forms*, (Toronto: Carswell, 1989). Citation 848 reads:

- 1) Committees may send for any papers that are relevant to their Orders of Reference. Within this restriction, it appears that the power of the committee to send for papers is unlimited.
- (2) The procedure for obtaining papers is for the committee to adopt a motion ordering the required person or organization to produce them. If this Order is not complied with, the committee may report the matter to the House, stating their difficulties in obtaining the requested documents. It is then for the house to decide what action is to be taken.
- (3) It cannot, however, be said that this requirement is absolute either in the case of government departments or of public or private bodies, since there are no instances recorded in which obedience to an Order for papers has been insisted on.

It is not clear to what extent the *Charter* may have restricted the privileges, immunities and powers of the Houses of Parliament. In *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 S.C.R. 319, the issue arose whether a general prohibition on the use of television cameras in the Nova Scotia House of Assembly was in contravention of s. 2(b) (freedom of the press) of the *Charter*. The Supreme Court of Canada held that the *Charter* does not apply to the members of a legislative assembly when they exercise their inherent privileges. Madam Justice McLachlin remarked:

In summary, it seems clear that, from an historical perspective, Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning. These privileges are part of the fundamental law of our land, and hence are constitutional. The courts may determine if the privilege

Although in theory the powers of parliamentary committees are clear, as the rest of this paper will reveal, attempts to obtain disclosure of information from the Government can prove to be an uphill battle. As Joseph Maingot recently remarked:

The acknowledged powers of committees to call for persons, papers and records had always been a question of some nicety as it related to persons or institutions that were responsible to a Minister of the Crown, at least in Canada. This has always been a "grey" area in practice, albeit clear in theory. However there simply has not been any serious attempt to press the matter until recent times.¹⁴

Part Two: The Process

The Senate put before the Committee a very demanding and onerous task. It was necessary for the Committee to inquire into events that occurred over a period of approximately six years. These events involved numerous discussions and deliberations over policy issues by several government departments as well as a complex and detailed set of negotiations between the Government and the private sector in relation to one of Canada's most valuable assets.

Undaunted, the Committee set for itself an aggressive timetable for the completion of its inquiry. The Committee was established on May 4, 1995. In early June, the Committee resolved to commence its hearings in early July. It is estimated that there are approximately 200,000 pages of documents in government files relating to the Pearson Agreements.

Gathering and Organizing the Documents

The Department of Justice was given the responsibility for making government documents available to the Committee. To assist them in this massive undertaking, the Department of Justice retained the services of the law firm of Scott & Aylen. The role of Scott & Aylen was twofold. First, the relevant documents had to be gathered in one place and organized according to the witnesses who were scheduled to appear before the Committee. Scott & Aylen retained the services of a firm of forensic accountants, Lindquist Avey, to assist them in this task. Second, Scott & Aylen reviewed the relevant documentation with government and non-government witnesses in order to prepare them for their appearance before the Committee.

claimed is necessary to the capacity of the legislature to function, but have no power to review the rightness or wrongness of a particular decision made pursuant to the privilege. (at 384)

In this case, the Court ruled that the House's right to exclude strangers was necessary for the proper functioning of the legislative assembly. Certain parliamentary powers, however, such as the power of a parliamentary committee to summon witnesses and for the Houses to take action to compel the witness to appear, may not pass the threshold test of 'necessity' and consequently, can be subject to *Charter* challenge.

¹⁴ Presentation by the House of Commons Standing Committee on Privileges and Elections to the House of Commons, attached as Appendix 3 to the Committee's First Report to the House, May 27, 1991.

The following is an outline of the process that was followed in making documents available to the Committee:

- All relevant government departments were asked to identify any documents that might be of potential interest to the Committee;
- Copies of all the documents were made and delivered to Lindquist Avey on June 13th, 1993;
- Lindquist Avey created a data base so that relevant documents could be recalled on a subject matter and potential witness basis;
- As witnesses were identified and the order of their appearance before the Committee became known, Lindquist Avey personnel gathered together those documents authored or received by the witness or that were otherwise relevant;
- A team of public servants from the Department of Justice and the Privy Council Office reviewed the documents; material relating to cabinet confidences, matters of personal or commercial privacy, advice to ministers and documents protected by solicitor-client privilege were removed and the expurgated documents were then sent back to Lindquist Avey;
- The expurgated documents were placed in binders, an index for each binder was prepared, and the documents were sent to the Clerk of the Committee who made them available to Committee members.

A total of 103 volumes of documents were delivered to the Committee, a volume typically containing approximately 350 pages.

The Vetting Process

In deciding which information was to be withheld from the Committee, officials from the Department of Justice and the Privy Council Office followed the principles embodied in the *Access to Information Act*.¹⁵ Although this Act is not applicable to parliamentary committees requesting information, George Thomson, Deputy Minister of the Department of Justice, testified before the Committee that the principles traditionally followed by the Government in deciding what information to make available to parliamentary committees are the same as those set out in the Act.¹⁶

¹⁵ R.S.C. 1985, c. A-1

¹⁶ *Proceedings of the Special Senate Committee on the Pearson Airport Agreements*, September 21, 1995, at 22:85:

Mr. Nelligan: ... Is it your view that this committee is limited to the material which would be given to an ordinary citizen under the Access to Information Act?

Mr. Thomson: No. It's my understanding that the - they are not limited to only the material provided under the

When passages in a document were excised, a section of the *Access to Information Act* was cited so as to communicate some understanding of the type of information that was being protected. The following is a list of sections of the *Access to Information Act* commonly cited by the government censors:

Section 19	Personal Information
Section 20	Third Party Confidential Commercial Information
Section 21	Advice to a Minister
Section 23	Solicitor-Client Privilege
Section 69	Cabinet Confidences

A discussion of each category of confidential information follows beginning with those areas considered to be the most sensitive.

1. Cabinet Confidences

The importance of cabinet confidentiality is well-established in the British and Canadian parliamentary systems. A list of documents that are typically considered cabinet confidences can be found in s. 69 of the *Access to Information Act*.¹⁷

Ms. Margaret Bloodworth, Deputy Clerk and Counsel to the Privy Council Office, explained to the Committee the rationale for protecting cabinet confidences:

Cabinet is the forum in which ministers reach consensus on actions that individual ones of them may take. Providing a forum in which ministers are free to express their individual opinions to their cabinet colleagues, vigorously debate issues and

Access to Information Act. However, the principles that are reflected in the Access to Information Act are in accordance with the practice that I talked about earlier that is followed.

¹⁷ Subsection 69(1) states:

This Act does not apply to confidences of the Queen's Privy Council for Canada, including, without restricting the generality of the foregoing,

- (a) memoranda the purpose of which is to present proposals or recommendations to Council;
- (b) discussion papers the purpose of which is to present background explanations, analyses of problems or policy options to Council for consideration by Council in making decisions;
- (c) agenda of Council or records recording deliberations or decisions of Council;
- (d) records used for or reflecting communications or discussions between ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) records the purpose of which is to brief ministers of the Crown in relation to matters that are before, or are proposed to be brought before, Council or that are the subject of communications or discussions referred to in paragraph (d);
- (f) draft legislation; and
- (g) records that contain information about the contents of any record within a class of records referred to in paragraphs (a) to (f).

come to a consensus on how to proceed, ensures that the full range of views can be taken into account before any decision is arrived at. It also ensures that ministers can collectively support all decisions taken and answer for them before Parliament.

The collective decision-making of ministers in cabinet is the key process for ensuring solidarity among ministers and their ability to retain the confidence of Parliament to which they are collectively responsible. If ministers are to be able to make decisions collectively, the privacy of their opinions and views relative to the evolution of government policy must be protected. If these opinions were made known before or after the decisions were taken, it would be difficult to maintain the solidarity and consensus among ministers which is essential to cabinet government.¹⁸

2. Advice to Ministers

Advice to ministers with regard to issues that are considered by cabinet falls within the category of cabinet confidences. However, public servants may also give advice to a minister on a matter that an individual minister can deal with without going to cabinet. Section 21 of the *Access to Information Act* defines the parameters of this category.¹⁹

Ms. Bloodworth testified that this type of information is kept confidential "in order to ensure that public servants provide full and frank advice and that ministers remain accountable and responsible for the ultimate decision, not public servants".²⁰

¹⁸ *Supra*, note 15 at 22:7.

¹⁹ 21.(1) The head of a government institution may refuse to disclose any record requested under this Act that contains

- (a) advice or recommendations developed by or for a government institution or a minister of the Crown,
- (b) an account of consultations or deliberations involving officers of employees of a government institution, a minister of the Crown or the staff of a minister of the Crown,
- (c) positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the Government of Canada and considerations relating thereto, or
- (d) plans relating the management of personnel or the administration of a government institution that have not yet been put into operation,

if the record came into existence less than twenty years prior to the request.

²⁰ *Supra*, note 15, at 22:8. Ms. Bloodworth commented further:

Now, section 21 ... provides for a discretionary ability to withhold not just advice provided directly to a minister but advice developed broadly within a government institution. It is however, discretionary. It is not a mandatory exemption and discretion has to be approached.

In this particular case, in view of the task of this committee, and in interests of providing as much information as possible, the principle that was followed, however, was that only advice provided to ministers would be protected, not advice that was provided throughout the department or departments involved.

3. Solicitor-Client Privilege

Advice that a government department receives from its counsel is subject to solicitor-client privilege and the Government will not disclose that information unless the client (the government department) waives the privilege. The rationale for the privilege was briefly explained by Mr. Thomson:

Often when giving legal advice, very hard and complex decisions are called for involving judgments as to trade-offs and possible options. To disclose legal advice in such circumstances can run the risk of producing a chilling effect on full and frank discussion between a client, or a client-department in this case, and their lawyers. In addition, such disclosures can have serious implications with respect to present and future litigation before the courts.²¹

4. Business Confidences

Consents were obtained from the major private sector companies involved in the Pearson transaction to release confidential business information relating to the negotiations and conclusion of the Pearson agreements. Where consent had not been obtained, this information was not provided.²²

5. Personal Information

The rationale for keeping personal information is self-evident. Personal information is defined in section 3 of the *Privacy Act*, R.S.C. 1985, c. P-21.

²¹ *Proceedings of the Special Senate Committee on the Pearson Airport Agreements*, Thursday, September 21, 1995 at 22:10.

²² The relevant section of the *Access to Information Act* states:

Third Party Information

20.(1) Subject to this section, the head of a government institution shall refuse to disclose any record requested under this Act that contains

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific or technical information that is confidential information supplied to a government institution by a third party and is treated consistently in a confidential manner by the third party;
- (c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to, or could reasonably be expected to prejudice the competitive position of, a third party; or
- (d) information the disclosure of which could be expected to interfere with contractual or other negotiations of a third party.

Part Three: The Difficulties

1. Information Initially Not Available In A Timely Fashion

In the early stages of the hearings, committee members were frustrated by the fact that they were given very little time to review the documents. On one or two occasions, voluminous documents were released less than a day before the appearance of the witness. Given the tight timetable, the enormous set of documents that needed to be organized and reviewed, and the large number of government and non-government people involved in the document disclosure process, it is perhaps not surprising that this problem arose. Much more disturbing is an incident that occurred just prior to the completion of the hearings.

In early September, the Committee was advised that there remained a number of documents that had not yet been released because they did not relate to a witness who testified or were outside the time frame or subject area of the witness' anticipated evidence. The Justice Department further indicated that the documents were currently being reviewed and would be released in the near future. No mention was made again of these documents until they were delivered to the Clerk's office at 4:00 pm on Friday, November 3rd. The last day of hearings was scheduled for the following Monday.

The release of these documents at the eleventh hour was highly disconcerting. Justice officials made no effort to give the Committee advance notice that these documents were about to be released. Moreover, Committee members were very disturbed to discover that a number of the documents were highly relevant and related directly to the evidence already given by earlier witnesses. The explanation offered by the Justice Department was that these particular documents were simply overlooked during the initial review.

In August, the Committee was informed that there still remained a large number of undisclosed, non-confidential documents. In the opinion of the Justice Department, these documents would not be of interest to the Committee. Justice officials agreed to produce a master list of these documents. On November 16, 1995, four months after the inquiry was commenced and after the Committee had completed its hearings, the master list of 6,015 documents was provided to counsel.

2. Refusal of Public Servant Witnesses to Answer Questions

A second difficulty that arose during the opening days of the inquiry was the refusal of some key senior federal public servants to answer directly questions put to them by committee members. The officials claimed special status on the grounds of ministerial confidences and their public service oath of secrecy.

Reference was made to a set of Privy Council guidelines entitled "Notes And Responsibilities of Public Servants In Relation To Parliamentary Committees".²³ Under the heading "Answers to Questions put by Committee", the following advice is given:

Witnesses testifying before Parliamentary committees are expected to answer all questions put by the committee. However, additional considerations come to bear in the case of public servants, since they appear *on behalf of the Minister*.

Public servants have a general duty, as well as a specific legal responsibility, to hold in confidence the information that may come into their possession in the course of their duties. ...

In the most general terms ... public servants have an obligation to behave in a manner that allows Ministers to maintain full confidence in the loyalty and trustworthiness of those who serve them. ... If they violate that trust on the grounds that they have a higher obligation to Parliament, then they undermine *the fundamental principle of responsible government, namely that it is Ministers and not public servants who are accountable to the House of Commons for what is done by the Government*. (emphasis in original)²⁴

It is submitted that this position is inconsistent with the views expressed in Part One of this paper. Erskine May, for instance, explicitly states that:

A witness is, however, bound to answer all questions which the committee sees fit to put, and cannot be excused, for example, on the ground that ...an oath has been taken not to disclose the matter under consideration ...²⁵

Similarly, Joseph Maingot claims that:

A witness must answer all questions put to him, subject only to points of order by a member, with the right of the chairman to make a ruling.²⁶

²³ Privy Council Office, December, 1990.

²⁴ *Ibid.*, at 3.

²⁵ *Supra*, note 10; reproduced in Beauchesne, *supra*, note 12, citation 863.

²⁶ *Parliamentary Privilege in Canada*, (Toronto: Butterworths, 1982) at 163.

The Committee, however, decided not to press the witnesses for the desired information since Mr. Jean Corbeil, the former Minister of Transport, was scheduled to appear and the necessary information could be obtained at that time.²⁷

3. The Swearing of Public Servants

The Committee had the power to examine witnesses under oath. Prior to the commencement of the hearings, it had been suggested that requiring witnesses to be sworn was unnecessary because all witnesses testifying before parliamentary committees are expected to tell the truth and inappropriate because requiring sworn testimony would judicialize the hearings and foster an atmosphere of mistrust and confrontation. Traditionally, it has not been customary for public servants appearing before Canadian parliamentary committees to be sworn.

Nevertheless, the Committee elected to exercise its power and have witnesses sworn. The reason for doing so was to impress upon the witnesses appearing before the Committee the seriousness of the inquiry. Recognizing that many of the public statements that had been made about the Pearson Agreements were based on opinion, innuendo and suspicion, the Committee was determined to get at the facts. It was hoped that testifying under oath would encourage witnesses to be forthcoming and to give serious thought to the matters being discussed. Where opinions were expressed, witnesses would be expected to present evidence to substantiate those opinions.

Concerns were expressed that requiring public servants to testify under oath could place them in a position of conflict between the oath to tell the "whole truth" and their duty of confidentiality to their Minister. One senior public servant, for instance, agreed to be sworn but added the following condition: "consistent with my oath of office".²⁸

It was the Committee's view that there is no conflict between a public servant's oath not to disclose ministerial confidences and an oath to tell the whole truth. The latter simply requires witnesses to give truthful and complete evidence on those matters which statutory rules and accepted conventions and practices permit the witness to testify about.

²⁷ Prior to the commencement of the hearings, it was anticipated that some witnesses might refuse to answer questions. At the Organization Meeting of June 8, 1995, the Chair and Deputy Chair adopted the following motion:

... witnesses will be denied any request to testify *in camera*. If after taking the Oath a witness refuses to testify or to answer questions, his or her reasons will be accepted. However, if such should occur, the committee may question their reasons for refusal.

²⁸ Harry Swain, Deputy Minister, Industry Canada, *Proceedings of the Special Senate Committee on Pearson Airport Agreements*, Thursday, July 27, 1995 at 7:4-5.

4. Inconsistent and Excessive Editing of Documents

It was acknowledged by Mr. Thomson, Deputy Minister of Justice, that the document disclosure process was not perfect.²⁹ At times, the process was not inclusive enough. Confidential handwritten notes on the bottom of memoranda from the Clerk of the Privy Council to the Prime Minister, for example, were inadvertently disclosed. On two occasions, uncensored documents were accidentally released from the office of the Minister of Justice to senators' assistants. At other times, documents that were censored were made available elsewhere uncensored.

More significantly, however, was the degree to which the documents were vetted and the absence of a mechanism whereby the committee could satisfy itself that information was being properly withheld. On one occasion, for instance, committee members were surprised by the number of deletions under section 23 (solicitor-client privilege) of a relatively innocent memo of a meeting in the Department of Transport. When a complete copy of the document was finally obtained, it was discovered that what was withheld was not lawyer's opinions, but only lawyers' names!

This example underscores the problem faced by the committee. When a document contains a deletion with a bold statement, such as "s. 23", the committee had no way to satisfy itself that the information was properly withheld.

As a possible solution, it was proposed that counsel to the Committee, after taking an oath of confidentiality, have an opportunity to review the uncensored government documents so as to ensure that the appropriate principles had been applied properly. Reference was made to the fact that other non-government people - Scott & Aylen, Lindquist Avey, and Mr. Nixon - were allowed to review confidential documents after having taken an oath of confidentiality.

The proposal, however, was rejected on the grounds that counsel to the Committee was not an agent of the Government unlike the others mentioned above.³⁰

²⁹ *Supra*, note 15, at 22:12.

³⁰ Both Ms. Bloodworth and Mr. Thomson in their testimony before the Committee addressed this issue: *supra*, note 15, at 22:74; 22:87, 90.

Ms Bloodworth: Mr. Nelligan, unlike those other people, is part of this committee, not part of the government as I've described it. Particularly when it comes to cabinet confidences, the very people that you are protecting cabinet confidences on behalf of ministers and former ministers from, are from the other partisan parts of our system, including legislative branches. So Mr. Nelligan is in a very different position from Mr. Nixon or Scott & Aylen in the sense that he is counsel to this committee, not part of the government. ...

Mr. Nelligan: All right. Assuming [that committees have] broad legal authority, would it not be necessary for them to have at least some assistance from witnesses and from departmental documents to determine whether they should exercise that strong power, and isn't there some way that the department and witnesses can then help them to come to valid public decisions as to whether that information should be put on the public record? ...

All I'm asking for is some help as to how we can resolve these impasses without having to have it all exposed in public. Is there not some way that someone could review these matters to determine whether it's of sufficient importance and advise the committee as to whether they should insist on their legal powers? ...

5. The Application of Solicitor-Client Privilege

On a number of occasions, information was withheld from the Committee on the basis of solicitor-client privilege. Solicitor-client privilege is not opposable to the power of a committee to obtain information.³¹

Mr. Thomson, however, testified that the following principles should be followed with respect to claims of solicitor-client privilege:

- i. The privilege belongs to the client, not the lawyer, and accordingly, the client may waive it.
- ii. Even if the privilege does apply and the client refuses to waive it, the committee ultimately has the right to require that the information be disclosed.
- iii. Committees should rarely exercise that right because of the chilling effect the disclosure of privileged information will have on the solicitor-client relationship and because of the implications that can arise in relation to external litigation. Justice lawyers should be given an opportunity to make representations as to why the information should not be disclosed.
- iv. In circumstances where the committee insists upon disclosure and the client refuses to waive the privilege, discussions should take place as to how the information might be put before the committee in a manner that is least damaging to the client and the solicitor-client relationship.
- v. In cases where an agreement cannot be reached, the Committee can ultimately refer the matter to the Senate or the House for final determination.

In response to a request by the Committee to have Department of Justice lawyers appear before the Committee to testify with respect to legal advice they gave or may have given relating to when the Government was legally bound by the Pearson agreement, Mr. Thomson expressed strong

Mr. Thomson: ... Mr. Nelligan, you are raising I think a valid point, which is when we see this claim being made, we like to have some sense of why it's being made in the particular case. And obviously my concern is that that not be done in a way that ends up just disclosing the information itself. In this particular case, I think what we've been doing is to try to deal with it on an individual basis when a particular case comes up where you have concerns or questions.

I think you raise a good question, and I think there might be some value in us exploring it. We're talking about how this might be dealt with in future cases, exploring whether it's possible to be a little clearer about why the particular claim is being made, so one at least has a sense of the rationale for it without disclosing the information itself, and whether that might be done in a way that goes beyond simply the section of the act itself. We've not done that ...

³¹ See Erskine May, *supra*, note 10:

A witness is, however, bound to answer all questions which the committee sees fit to put, and cannot be excused, for example, ... because the matter was a privileged communication such as that between a solicitor and a client ...

reluctance. Mr. Thomson argued that the Committee already had the views of the Government's chief negotiator on this issue and, given the fact that no legal advice was actually given, it was not the appropriate role for Justice lawyers to give legal opinions to a parliamentary committee as to what might have been the liability of the Government if an opinion had been requested.

After two invitations to appear were declined, the Committee summoned the witnesses. The justice officials, claiming that they were appearing "voluntarily", agreed to testify as to what advice was given but not what advice might have been given if asked.

6. The Failure Of The Committee To Obtain Key Treasury Board Documents

The last and certainly one of the most frustrating problems encountered by the Committee relates to its unsuccessful attempts to obtain disclosure of some highly relevant Treasury Board documents.

In August 1993, Treasury Board was asked to give its approval for the Minister of Transport to conclude the Pearson agreements. To assist in its deliberations, documents containing internal government advice and analysis, including a review of the potential dangers and risks associated with the Pearson agreements, were submitted to Treasury Board.

Ms. Bloodworth testified that these Treasury Board submissions are confidential cabinet documents of the Campbell government. There exists, she explained, in Canada a well-established convention, respected by successive governments, that a newly elected administration may not have access to the confidential cabinet documents of previous governments. When a change of government occurs, cabinet records are left in the custody of the Clerk of the Privy Council.³²

Contrary to this alleged convention, the August 1993 Treasury Board submissions were released to Mr. Nixon, ostensibly in error, shortly after he was appointed by Mr. Chretien to conduct a review of the Pearson agreements. When Mr. Nixon and his staff appeared before the Committee, it was discovered that not only had they reviewed these documents, they had relied heavily on various parts of them for sections of their final report. Mr. Stephen Goudge, Mr. Nixon's legal advisor, testified as follows:

Did I derive support for some of the things in the Treasury Board's submissions? Absolutely yes, absolutely yes. I mean I did; there is no question about it. When I put forward my memorandum to Mr. Nixon, parts of it relied heavily on what was in the Treasury Board submission.³³

³² Supra, note 15 at 22:7.

³³ Proceedings of the Special Senate Committee of the Senate on the Pearson Airport Agreements, Thursday, September 28, 1995 at 27:5-6.

The release of the Treasury Board submissions to Mr. Nixon underscores the fact that materials of this nature are not commonly regarded as cabinet records. So-called cabinet records consisting of reports containing background analysis and discussion should be made available to a parliamentary committee, particularly in this case, where they were given to Mr. Nixon and influenced his decision.

In addition to citing the rules relating to cabinet confidentiality, Privy Council officials also indicated that the release of these documents without the authorization of former Prime Minister Kim Campbell would constitute a violation of the convention restricting access to the confidential papers of previous ministries. It is our belief that the practice of refusing access to members of the incoming government to the papers of previous governments applies, and should only apply, to politically sensitive, inner cabinet records. The Treasury Board submissions sought by the Committee clearly do not fall within this narrow category.

To complicate matters further, the Treasury Board documents were leaked to a reporter, Greg Weston, at the *Ottawa Citizen* in September, 1993. On September 25th and 26th, 1993, two articles appeared in the *Ottawa Citizen* in which Mr. Weston relied heavily upon the information contained in the Treasury Board submissions to harshly criticize the Pearson agreements.³⁴ More recently, on September 25th, 1995, Mr. Weston wrote another column claiming that the Senate inquiry into the Pearson agreements was a waste of time and money because, without the Treasury Board submissions, the Committee did not have the full picture.³⁵

In response, the Committee twice invited Mr. Weston to appear and to make the Treasury Board documents available. The managing editor, on behalf of Mr. Weston, declined the Committee's invitations, on the basis that the Committee should seek access to the documents from the Government. When it was pointed out to the managing editor that the Committee has no way of knowing exactly what documents Mr. Weston has in his possession and was relying upon to cast suspicion over the Committee's inquiry, the newspaper agreed to publish an additional article outlining exactly what documents Mr. Weston possesses.³⁶

The Committee then proceeded to issue a report to the Senate asking that an address be made to the Governor General requesting that the Treasury Board submissions be made available to the Committee. The procedure for an address to the Governor General requesting the disclosure of documents finds its authority in Rule 133 of the *Rules of the Senate*.³⁷

³⁴ Greg Weston, "Tories ignored warnings of airport costs", *The Ottawa Citizen*, September 25, 1993 at A1 and Greg Weston, "Privatizing Pearson: The anatomy of a deal", *The Ottawa Citizen*, September 26, 1993 at A1.

³⁵ "Pearson inquiry whitewash spreads beyond deleting details", *The Ottawa Citizen*, September 25, 1995 at A2.

³⁶ See Greg Weston, "Dear senators: Below please find a road map to lost Pearson papers", *The Ottawa Citizen*, October 12, 1995 at A2.

³⁷ Rule 133 states:

According to the *Manual of Official Procedure of the Government of Canada*, the confidentiality of the advice contained in cabinet documents belongs to the Governor General and it is within his or her prerogative to release the documents:

Disclosure of Cabinet records is regulated by the Privy Councillor's oath and by the concept that Cabinet decisions are advice to the Sovereign which may only be revealed with his consent. Permission is sought through the Prime Minister who may recommend to the Governor General that it be granted, limited or refused.³⁸

This matter is currently before the Senate.

When the royal prerogative is concerned in any account or paper, an address shall be presented to the Governor General praying that the same may be laid before the Senate.

³⁸ Privy Council Office, 1968, Article 9 under the heading "Cabinet Records" at 27.

Recommendations

1. Improved Co-operation From The Department of Justice

Despite claims from government officials that every effort was made to release documents as quickly as possible, we believe that there remains considerable room for improvement in the documents disclosure process. The abrupt disclosure of relevant documents, for instance, just prior to the last day of hearings and more than four months after the hearings had commenced, was, in our opinion, unacceptable. Moreover, the failure to provide before the end of the hearings a list of non-confidential documents that had not been disclosed is indicative of the general reluctance of the Department of Justice to release information³⁹ and the need for improved co-operation.

We recommend that the Special Joint Parliamentary Committee referred to in Recommendation 5 be asked to work with Justice Department officials to establish rules for the handling of documents in future inquiries.

2. Excessive Application of Solicitor-Client Privilege

It became obvious from the number and location of deletions in the documents made on the basis of solicitor-client privilege that the Justice Department's application of this privilege was clearly excessive.

We are in strong agreement with the views expressed by the Information Commissioner of Canada:

Most legal opinions, however stale, general or uncontroversial, are jealously kept secret. In the spirit of openness, the government's vast storehouse of legal opinions on every conceivable subject should be made available to interested members of the public.

Tax dollars [are] paid for these opinions and, unless an injury to the conduct of government affairs could be reasonably be said to result from disclosure, legal opinions should be disclosed.⁴⁰

³⁹ It is interesting to note that lawyers appearing before the Somali inquiry have complained about heavy-handed attempts by Justice officials to restrict access to potential witnesses: "Somalia inquiry lawyers reject Justice demands", *The Globe and Mail*, November 1, 1995 at A11. A letter from the Justice Department to all parties with standing before the inquiry essentially asserted that notice must be given to Justice officials before current or former civil servants or military personnel are contacted. Concern was expressed by Mr. Justice Gilles Letourneau, the Federal Court judge chairing the inquiry, that the letter would intimidate potential witnesses from coming forward.

⁴⁰ *Annual Report 1993-1994*, Information Commissioner of Canada, (Ottawa: Minister of Supply and Services Canada, 1994) at 30.

We recommend that Parliamentary Committees be given the right of access to legal opinions prepared by Justice Department staff unless those opinions would jeopardize the government's position in an issue which is before, or is likely to come before, the courts. The precise rules governing access to legal opinions should be developed by the Special Joint Parliamentary Committee referred to in Recommendation 5.

3. Narrowing the Interpretation of Cabinet Confidences

Throughout the hearing, members of the Committee made a conscious effort to respect cabinet confidences. However, we question whether the principle of cabinet confidentiality was being interpreted too broadly by government officials.

In 1986, the House of Commons Standing Committee on Justice and Solicitor-General issued a unanimous report entitled *Open and Shut: Enhancing the Right to Know and the Right to Privacy*. After reviewing the reasons for keeping cabinet records confidential, the committee remarked:

Nevertheless, the Committee does not believe that the background materials containing factual information submitted to Cabinet should enjoy blanket exclusion from the ambits of the Acts (Privacy and Access). It is vital that subjective policy advice be severed from factual material found in Cabinet memoranda ... [But] factual material should generally be available under the Act ...⁴¹

We strenuously disagree with the reasons given by the Privy Council Office as to why the Treasury Board submissions discussed earlier should not be disclosed to the Committee. It has to be remembered that these documents merely contain background factual analysis and that the documents were released to Mr. Nixon and leaked to a newspaper reporter who discussed the contents of the documents publicly. New rules governing what properly constitutes a "cabinet confidence", and in what circumstances cabinet confidences should not be treated as confidential, are urgently needed.

We recommend that these rules be developed by the Special Parliamentary Committee referred to in Recommendation 5 below.

4. Greater Openness of the Vetting Process

When passages from a document were deleted, the Committee had the benefit of being referred to a section of the *Access to Information Act* which indicated in general terms the reasons for the deletion. However, no information was conveyed to the Committee when an entire document was withheld.

⁴¹ (Ottawa: House of Commons, 1986). The Information Commissioner of Canada in his *1993-1994 Annual Report*, *ibid*, at 32 makes a similar recommendation.

We recommend that Counsel to the Committee be permitted to review all of the unexpurgated documents after having taken an oath of confidentiality. Counsel can then report to the Committee whether he or she believes that the policies relating to access to information have been correctly applied. In the absence of Counsel's advice, the Committee has no way of knowing whether to challenge the decisions made by government officials.

5. Further Examination Needed

The right of the Senate and the House of Commons to institute inquiries is fundamental to the Parliamentary Committee process. It is therefore imperative that the broad powers of parliamentary committees to send for persons, papers and records be recognized and respected. Parliament's right to initiate investigations should not be allowed to atrophy simply because the powers of parliamentary committees have seldom been fully exercised and consequently, are little understood.

We recommend that for reasons we have set out, the powers and the ability to discharge the mandate given to a parliamentary committee should be the subject of examination by a Special Joint Parliamentary Committee.

Appendix A - Witnesses

Witnesses	Organization	Date	Issue
Baker, Gordon	Counsel, Matthews Group	September 13, 1995	18
		September 14, 1995	19
Bandeem, Robert	Interim Chair, Greater Toronto Regional Airport Authority	July 25, 1995	5
Barbeau, Victor	Assistant Deputy Minister, Transport Canada	July 11, 1995	2
		July 12, 1995	3
Berigan, Gerry	Regional Director for Airports, Atlantic Region, Transport Canada	July 26, 1995	6
Bloodworth, Margaret	Privy Council Office	September 21, 1995	22
Bourgon, Jocelyne	Clerk of the Privy Council	September 14, 1995	19
Broadbent, David	Former Chief Negotiator, Transport Canada	August 2, 1995	9
Cappe, Mel	Former Deputy Secretary, Treasury Board	August 22, 1995	14
Church, Gardner	Former Deputy Minister, Government of Ontario	July 25, 1995	5
Clayton, Al	Bureau of Real Property and Material, Treasury Board Secretariat	July 12, 1995	3
		August 22, 1995	14
Cloutier, John	Senior Financial Advisor, Airport Transfers, Transport Canada	July 26, 1995	6
Corbeil, The Hon. Jean	Former Minister of Transport	September 20, 1995	21
Coughlin, Peter	Chairman of the Pearson Development Corporation	September 12, 1995	17
Crosbie, Allan	Crosbie & Company Inc.	September 26, 1995	25
		September 27, 1995	26
		September 28, 1995	27
		November 6, 1995	30
Desbois, Cameron	Vice-President and General Counsel, Air Canada	August 16, 1995	12
Desmarais, John	Senior Advisor to the Associate Deputy Minister, Transport Canada	August 3, 1995	10
		August 15, 1995	11
		October 23, 1995	29
Dickson, Don	Former Director General of Finance, Department of Transport	July 26, 1995	6

Appendix A - Witnesses

Witnesses	Organization	Date	Issue
Doucet, Fred	Fred Doucet Consulting International	August 24, 1995	16
Douglas, Austin	Former Associate Director, Transport Canada	July 11, 1995	2
Durrett, Lamar	Executive VP of Corporate Services, Air Canada	August 16, 1995	12
Edlund, L. Constance	Acting Director, Small Business Loans Administration, Industry Canada	July 27, 1995	7
Emerson, David	President and Chief Executive Officer, Vancouver Local Airport Authority	July 12, 1995	3
Farquhar, Michael	Director General of Airport Transfer, Transport Canada	July 25, 1995 July 27, 1995	5 7
Fiore, Dominic	Former Senior Director of Real Estate, Air Canada	August 16, 1995	12
Fox, William John	Earncliffe Strategy Group	August 23, 1995	15
Gershberg, Sid	Assistant Secretary, Treasury Board Secretariat	August 22, 1995	14
Goudge, Stephen	Gowling, Strathy and Henderson	September 26, 1995 September 27, 1995 September 28, 1995 November 6, 1995	25 26 27 30
Green, Robert, Q.C.	Senior General Counsel, Department of Transport	October 23, 1995	29
Harrema, Gary	Chair, Regional Municipality of Durham	July 25, 1995	5
Heard, Andrew	Assistant Professor, Simon Fraser University	September 25, 1995	24
Hession, Raymond	Former President of Paxport Inc.	August 1, 1995 August 2, 1995	8 9
Jolliffe, Keith	Financial Advisor, Transport Canada	August 3, 1995 August 15, 1995	10 11
Kozicz, Peter	Vice-President, Pearson Development Corporation	September 21, 1995	22
L'Abbé, Robert	Raymond, Chabot, Martin et Paré	July 27, 1995	7

Appendix A - Witnesses

Witnesses	Organization	Date	Issue
Labarge, Paul	Blake, Cassels & Graydon	September 21, 1995	22
Labelle, Huguette	Former Deputy Minister, Transport Canada	August 1, 1995	8
Lane, Ron	Former Chair of the Evaluation Committee	July 26, 1995	6
Lewis, The Hon. Doug	Former Minister of Transport	July 13, 1995	4
Mallory, James	Professor Emeritus, McGill University	September 25, 1995	24
Matthews, Donald	Chairman of the Matthews Group Ltd	September 13, 1995 September 14, 1995	18 19
Matthews, Jack	President, Paxport Inc.	September 21, 1995	22
McCallion, Hazel	Mayor of Mississauga	September 19, 1995	20
Meinzer, Gerry	Former Interim Chair, Greater Toronto Regional Airport Authority	July 25, 1995	5
Metcalfe, Herb	Capital Hill Group	August 23, 1995	15
Mulder, Nick	Deputy Minister, Transport Canada	July 11, 1995	2
Near, Harry	Earncliffe Strategy Group	August 23, 1995	15
Neville, William	Hession, Neville and Associates	August 24, 1995	16
Nixon, Robert	Chairman of the Board, Atomic Energy of Canada Ltd.	September 26, 1995 September 27, 1995 September 28, 1995 November 6, 1995	25 26 27 30
Pascoe, Andrew	Andrew Pascoe Inc.	August 24, 1995	16
Pigeon, Jacques, Q.C.	General Counsel, Department of Transport	October 23, 1995	29
Power, Wayne	Director of Transition, Pearson International Airport, Transport Canada	July 26, 1995	6
Quail, Ranald	Former Associate Deputy Minister, Transport Canada	August 23, 1995	15
Robinson, David	Director of Real Estate, Air Canada	August 16, 1995	12
Rowat, William	Former Associate Deputy Minister, Transport Canada	August 3, 1995 August 15, 1995 October 23, 1995	10 11 29

Appendix A - Witnesses

Witnesses	Organization	Date	Issue
Shortliffe, Glen	Former Clerk of the Privy Council and former Deputy Minister of Transport	July 13, 1995 September 25, 1995	4 24
Simke, John	Price Waterhouse	August 23, 1995	15
Sinclair, Gordon	Former President of Air Transport Association of Canada	August 17, 1995	13
Spencer, Norman	Executive Vice-President, Pearson Development Corporation	September 12, 1995	17
Stehelin, Paul	Deloitte & Touche	August 17, 1995	13
Swain, Harry	Deputy Minister, Industry Canada	July 27, 1995	7
Thomson, George	Deputy Minister, Department of Justice	September 21, 1995	22
Turner, Stephen	Audit and Evaluation Branch, Public Works Canada	July 12, 1995	3
Vineberg, Robert	Counsel, Pearson Development Corporation	September 12, 1995	17
Warwick, Ed	Former General Manager, Major Crown Projects, Pearson Airport	July 11, 1995 July 12, 1995	2 3
Wilson, John	Professor, University of Waterloo	September 25, 1995	24

Appendix B - Chronology

Establishment of Terminal 3 at Lester B. Pearson International Airport

Sept. 1986	Minister of Transport John Crosbie announces initiative for construction of a new Terminal at Pearson International Airport with a call for expressions of interest from the private sector developers to design, finance, build and operate a new Terminal 3.
Dec. 18, 1986	Request for proposals to construct Terminal 3.
Apr. 9, 1987	Minister Crosbie, announces new Airport policy. Its broad objectives are to permit airports to better serve local community interests, to enhance regional economic development potential, to allow the national airport system to operate in a more cost efficient manner. Includes 8 guiding principles under which airports transfer would be considered.
May 1, 1987	Minister Crosbie announces receipt of 4 proposals for Terminal 3. They are from Airport Development Corporation (Huang and Danczkay), Falcon Star, a Bramalea-Ward Air Consortium and a Cadillac Fairview-American Airlines consortium.
June 22, 1987	Airport Development Corporation is selected as the preferred developer to construct and operate Terminal 3 at Pearson.
Oct. 14, 1987	Minister Crosbie announces Treasury Board authorization for Transport Canada to enter into an agreement with Airport Development Corporation.
Nov. 20, 1987	Agreement signed with Airport Development Corporation
Apr. 21, 1988	Ground lease for Terminal 3 signed with Airport Development Corporation. Construction begins in May.
June 14, 1989	Claridge Properties Ltd. acquires control of Terminal 3 from Huang and Danczkay.
Feb. 21, 1991	Terminal 3 (\$520 million facility) opens for business.
Apr. 5, 1992	Claridge acquires a 73% stake Terminal 3. Lockheed Air Terminals of Canada took the remaining 27%.

Appendix B - Chronology

The Request for Proposals for Terminals 1 and 2

Jan. 4, 1988	Glen Shortliffe named Deputy Minister of Transport
Feb. 1988	Report called "Transport Canada Airports Authority Model" approved. It contains 117 recommendations to improve revenue enhancement/cost recovery in the airport system.
Mar. 30, 1988	Creation of an Airport Authority Group in Transport Canada to be responsive to proposals from eligible local bodies interested in taking over ownership and/or operation of local airports.
Apr. 1988	Benoit Bouchard named Minister of Transport.
July 1988	An eight member private sector Airport Transfer Advisory Board headed by the Deputy Minister of Transport is formed to advise the Minister about proposals on airport transfers. A Departmental Airport Transfer Task Force is formed to undertake negotiations for the transfer of major federal airports to local control.
Dec. 12, 1988	Department of Transport announces a cap of 70 peak hour aircraft movements (take-offs or landings) a decrease of 15% over previous levels in order to reduced delays at Pearson.
Jan. 5, 1989	Ray Hession, on behalf of Matthews Group, meets with Glen Shortliffe who gives him an overview of the Government's strategic objectives over the next few years and suggest he meet with the Executive Director of the Airport Authority Group.
Feb. 28, 1989	Protocol between Air Canada (Doug Port) and Transport Canada (Chern Heed) for the Funding and Refurbishment of Terminal 2.
Apr. 1989	Toronto Metro Council sets up a task force to look into the creation of the Greater Toronto Airports Authority.
Apr. 1989	Concept Plan to Expand Pearson submitted by Airport Development Corporation.
May 24, 1989	Ray Hession meets with Victor Barbeau Assistant Deputy Minister of Transport to discuss development at Pearson.
May 31, 1989	Ray Hession meets with Kenneth Sinclair, Assistant Deputy Minister Transport and Fred Gorbet, Deputy Minister of Finance, to discuss Pearson and advises them that an unsolicited proposal will be forthcoming shortly.
May 1989	36 supplementary principles (to the 8 Guiding principles of Apr. 9, 1987) are introduced to provide guidance to groups interested in managing Transport Canada airports across the country.
June 1989	Liberal Party Task Force head by John Nunziata concludes that Pearson is one of the worst airports in the world with a high risk of collision due to high volume of traffic.

Appendix B - Chronology

June/July 1989	Letters of Intent to enter into formal airport transfers negotiations signed by the federal government with the heads of local groups in Edmonton, Calgary, Vancouver and Montreal.
July 13, 1989	Ray Hession meets with Dennis Groom, Executive Vice President of Air Canada to discuss proposal for Pearson.
July 26, 1989	Agreement between Transport Canada (Gerry Berigan and Brian Kelly) and Air Canada (Dennis J. Groom) regarding principles for a long term lease and the construction of additional runways. Other matters such as moving some Charters to Hamilton were also agreed.
Aug. 17, 1989	Letter confirming Government acceptance of agreement with Air Canada worked out on July 26 (Guiding Principles for Air Canada Lease). Signed by Glen Shortliffe for Transport Canada
Aug. 22, 1989	Glen Shortliffe writes to Ray Hession that the Request for Proposal process will be open and public.
Sept. 1989	Base Case Reports on the airports in Vancouver, Montreal, Edmonton, Calgary prepared for the Airport Transfer Task Force. Local groups to look into Local Airport Authority's formed in other cities including Moncton, Winnipeg, Windsor, Thunder Bay and Kamloops and Quebec City. The idea of a Local Airport Authority for the Toronto Airport is being promoted by a special Greater Toronto Co-ordinating Committee.
Sept. 25, 1989	Paxport Management Inc., a joint venture company formed by the Matthews Group and Bramalea Limited, submit to Minister Bouchard an unsolicited proposal to privatize Terminals 1 and 2 at Pearson.
Oct. 2, 1989	Ray Hession informs several individuals about Paxport proposal and asks for opportunity to discuss it with them. These meetings continue over the next several months.
Oct. 2, 1989	Victor Barbeau does a critique of the unsolicited Paxport proposal for Glen Shortliffe. Among other things notes that the Minister is committed to an environmental review before making a final decision.
Nov. 28, 1989	Joint announcement by Transport Canada and Air Canada regarding \$52 million improvements to Terminal 2.
Feb. 23, 1990	Doug Lewis named Minister of Transport
Mar. 16, 1990	Alan Tonks, Chair of the Municipality of Metro Toronto writes to Minister Lewis advising him of the progress of a community task force regarding the merits of a Toronto Local Airport Authority.
Mar. 20, 1990	Document for Ministerial Briefing on Pearson Airport prepared by the department. Topics include traffic situation, demand/capacity, organization, financial position, performance indicators, economic impact, noise management, international waste, terminal renovation, environmental issues, etc.
Apr. 4, 1990	Gerry Berigan of Transport Canada prepares detailed commentary on Ray Hession proposal.
Apr. 23, 1990	Air Canada Executive Committee meets to discuss Pearson situation. They are not convinced the government will insist that Air Canada team with a private developer to develop Pearson.

Appendix B - Chronology

May 3, 1990	Canadian Airports Limited sends Minister Lewis an outline of a proposal to privatize Pearson Airport. Details to follow later.
May 4, 1990	Minister Lewis meets with Pierre Jeannot, President of Air Canada to discuss Air Canada position on redevelopment of Pearson. On May 15 Mr. Jeannot sends a two page proposal that Air Canada and Transport Canada enter into negotiations to lease to Air Canada the land occupying the Terminal 1 complex for a period of 80 years. Air Canada to take full responsibility for terminal management.
May 16, 1990	Victor Barbeau meets with Air Canada to discuss their proposal to redevelop Terminal 2.
June 1, 1990	Pierre Jeannot writes to Minister Lewis to recommend the Paxport proposal. He subsequently meets with him and outlines three critical issues for Air Canada including the possibility of being "held to ransom" if there is a competitive bidding process, the long term viability of Air Canada as a private company and the urgency of the situation.
June 12, 1990	Doug Lewis replies to Alan Tonks saying Transport Canada is prepared to work closely with Regional and provincial officials toward creation of a Local Airport Authority.
June 18, 1990	British Airport Authority announces its intention to bid on the Pearson redevelopment project.
June 25, 1990	Canadian Airports Limited meets with Victor Barbeau, and others to discuss the main items that will be included in their unsolicited proposal.
June 27, 1990	Minister Lewis replies to Air Canada proposal. He needs to consult with Cabinet. Commitment to proceed as expeditiously as possible.
July 1990	Unsolicited proposal to modernize T1/T2 from Canadian Airport Limited.
Sept. 1, 1990	Huguette Labelle named Deputy Minister of Transport. Glen Shortliffe named Associate Secretary to the Cabinet.
Sept. 11, 1990	Meeting of Pearson Airport Steering Committee. Minister wants the Request for Proposal to be out by July 1991.
Oct. 9, 1990	Minister Lewis tables Bill C-85 (<i>Airport Transfer Bill</i>). Sets out the definition of Local Airport Authorities (LAA) and the process for transferring control of airports to them. The Act requires the <i>Official Languages Act</i> and the <i>Canada Labour Code</i> apply to transferred airports and employees. (Adopted in Mar. 1992)
Oct. 17, 1990	Minister Lewis announces that private sector participation in the modernization of Terminals 1 and 2 would be sought through a Request for Proposals.
Oct. 17, 1990	Greater Toronto Area Airport Study Committee recommends no action be taken with respect to further privatization of LPBIA.

Appendix B - Chronology

Oct. 18, 1990	Minister Lewis meets with Paxport and other interested parties regarding the Request for Proposal and the evaluation process.
Nov. 1990	Transport Canada produces document entitled Southern Ontario Strategy.
Nov. 26, 1990	Ray Hession letter to Huguette Labelle suggesting that some in the Department do not seem to be taking the privatization policy seriously enough, particularly since the Greater Toronto Local Airport Authority has been lobbying for a local airport authority for Pearson.
Dec. 3, 1990	D.A. Lychak, City Manager of Mississauga and Chair of Greater Toronto Local Airport Authority Technical Advisory Committee prepares a 3 page memorandum for Heads of Council in preparation for their meeting with Minister Lewis on Dec. 7. Calls for creation of a Task Force to prepare case for a Local Airport Authority.
Dec. 7, 1990	Opening of new 40 million extension to international area of T2
Dec. 7, 1990	Minister Lewis meets with Ontario Ministers and Heads of Municipal Councils regarding redevelopment of Pearson.
Jan. 28, 1991	Claude Taylor, Chief Executive Officer of Air Canada, points out that Air Canada will constitute 92% of Terminal 2 and makes case for Air Canada ownership of the Terminal.
Feb. 15, 1991	Ed Philips, Ontario Minister of Transportation writes to Minister Lewis to support creation of a Local Airport Authority. Attaches document prepared by Heads of Councils. Includes details for specific consideration that should be included in the Request for Proposal.
Mar. 6, 1991	Doug Port of Air Canada informs Ray Hession that Air Canada is obliged to make its statement of requirements to Transport Canada by Apr. 1. Air Canada has been told by Transport Canada not to use the opportunity to act on behalf of any third party. Air Canada sends a letter to Paxport severing their relationship.
Mar. 28, 1991	Leo Desrochers, Executive Vice President of Air Canada, writes to Gerry Berigan arguing that Air Canada can run Terminal T1/T2 in a non discriminatory way towards other carriers.
Apr. 4, 1991	Air Canada and Transport Canada official meet to get input for the Request for Proposal process.
Apr. 15, 1991	Paxport invited along with other prospective bidders to meet with Victor Barbeau, Gerry Berigan, Wayne Power.
Apr. 18, 1991	Ray Hession letter to Minister Lewis trying to reconcile arguments for going ahead with Request for Proposal with the need to wait for result of an environmental assessment for runway construction.
Apr. 22, 1991	Jean Corbeil named Minister of Transport.
May 9, 1991	Ray Hession writes to Huguette Labelle about rumours that Air Canada is working with a Local Airport Authority to put forth a proposal to manage and develop Pearson.

Appendix B - Chronology

June 12, 1991	Ray Hession meets with Glen Shortliffe now Associate Secretary to the Cabinet. He asks if the Privy Council Office would stand in the way of decoupling the Environmental Review for Airport and the Request for Proposal in order to avoid delaying the Request for Proposal beyond October. Glen Shortliffe says he would not object.
July 30, 1991	Ed Philip (Ontario Minister of Transportation) writes to Minister Corbeil. Recommends that only T1 be privatized.
Aug. 7, 1991	Minister Corbeil meets with Toronto Board of Trade. No decision yet as to when to proceed with redevelopment or whether to delink it from environmental assessment.
Aug. 26, 1991	Leo Desrocher of Air Canada writes to Huguette Labelle. He notes that Transport Canada is about to proceed with an Request for Proposal. He points out that Air Canada has proposed an alternative that he thinks meets the objectives of Transport Canada. Urges reconsideration of this. Also refers to 1989 agreement between Glen Shortliffe and Denis Groom on guiding principles of Air Canada's long term lease. This agreement is still in effect.
Dec. 23, 1991	Canadian Airport Limited decides to pull out of bidding for Pearson.
Feb. 3, 1992	Minister Corbeil asks Canadian Airports Limited to reconsider decision to pull out of bidding.
Feb. 20, 1992	Treasury Board approves the issuance of the Pearson Request for Proposal.
Feb. 1992	Renovation of T2 Domestic wing and outbound baggage facility completed. Project jointly funded by AC and Transport Canada for a total cost of 112 million.

Evaluating the Request for Proposals

Mar. 16, 1992	Department of Transport releases its Request for Proposals. Interested parties have until June 19 to submit projects for redevelopment of T1/T2.
Apr. 7, 1992	Request for Proposal briefing organized by Transport Canada in Toronto.
Apr. 30, 1992	Addendum to Request for Proposal issued by Transport Canada relating to parking capacity, industrial benefits, pension plan and other matters.
May 1992	Project Evaluation Committee Chairman Ron Lane selected.
May 4, 1992	Price Waterhouse contracted to assist Department in evaluation of Request for Proposal.
May 7, 1992	Ray Hession writes to Minister Pouliot "it would be regrettable if your government should maintain its apparent preference for a single terminal operator"
May 21, 1992	Project Evaluation Committee meets including Price Waterhouse, Richardson Greenshields, Bobrow Eldon and other consultants.

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May 22, 1992	Sid Valo write to Minister Corbeil to report on progress in establishing Toronto Local Airport Authority
May 27, 1992	Briefing notes on each of the proposals received prepared by Gerry Berigan.
June 1992	Firm of Raymond, Chabot, Martin, Paré engaged to audit the review of proposal.
June 1, 1992	South Central Ontario Airports Authority inquires about possibility of a joint submission with Claridge. Proposal subsequently dropped.
June 8, 1992	Original date (June 19) for submission of proposals to redevelop Terminals 1 and 2 is extended to July 13, 1992 at request of Claridge. Paxport claims this gives advantage to competitors.
June 17, 1992	Glen Shortliffe named Clerk of the Privy Council
June 17, 1992	Briefing on Local Airport Authority process for members of Greater Toronto Local Airport Authority by Chern Heed, Wayne Power and other Transport officials.
July 3, 1992	Claridge Proponent Registration is amended to replace the name "Claridge" with the name "Airport Terminals Development Group."
July 8, 1992	Price Waterhouse provides Wayne Power and Transport Canada with their evaluation of the Commercial Opportunity Associated with Redeveloping Terminals 1 and 2. Depending on assumptions the value is between \$342 million and \$561 million.
July 13, 1992	Proposals submitted by 3 proponents: Paxport, Airport Terminal Development Group and Morrison Hersfield Group. However Morrison Hersfield did not meet basic requirements of proposal process and was not considered. (No letter of credit or security deposit and not registered before filing its proposal).
July 24, 1992	Meeting of Greater Toronto Area mayors agree to bring resolution supporting Pearson Regional Airport Authority back to their Councils.
Sept. 15, 1992	Air Canada asks for delay in any decision on the Request for Proposal.
Sept. 22, 1992	Report to the Greater Toronto Area Regional Chairmen on establishment of a Local Airport Authority for the Greater Toronto Region.
Oct. 1992	Connie Edlund of Industry Canada asked to undertake a review of the proposals specifically focusing on financial viability.
Oct. 7, 1992	Alan Tonks sends copy of Sept. 22 Report on the establishment of a Local Area Authority to the Minister of Transport.
Oct. 26, 1992	Report to Huguette Labelle on Validation of Terminals 1 and 2 Redevelopment Project Evaluation Process by Raymond, Chabot, Martin, Paré.

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- Nov. 6, 1992 Minister of Transport asks Alan Tonks for the views of various regional and municipal councils on the Report of the Task Force on Local Airport Authority for Toronto.
- Dec. 7, 1992 Ministerial announcement that Paxport Inc had submitted best overall acceptable proposal.

Merger of Paxport and Claridge and Negotiating the Agreement

- Dec. 7, 1992 Letter from Victor Barbeau to Paxport. Financial viability of the proposal to be demonstrated by Feb 15, 1993. This was later extended to Mar. 1
- Dec. 15, 1992 Ray Hession and Jack Matthews meet Victor Barbeau and others from Transport. Discussion regarding the definition of financial viability.
- Dec. 21, 1992 Ray Hession and Jack Matthews meet Minister Corbeil following their selection as best overall proponent to redevelop and manage T1/T2.
- Dec. 22, 1992 Victor Barbeau writes to Ray Hession regarding financial viability. "It is not our intention to define for you what would constitute evidence of financeability which is satisfactory to the government...."
- Jan. 1993 Ran Quail, Associate Deputy Minister of Transport, named Chief negotiator for Government.
- Jan. 7, 1993 Meetings between Transport Canada and Paxport regarding financeability questions.
- Jan. 14, 1993 Agreement between Airport Terminal Development Group and Paxport outlining in detail how the groups will work together.
- Jan. 14, 1993 Deloitte & Touche engaged to assist with evaluation of financeability of proposal.
- Jan. 20, 1993 Chern Heed drafts memo for Ran Quail on proposed merger of two proponents.
- Jan. 21, 1993 Preparation of an Issues/Concerns paper on Terminal Redevelopment Project for Wayne Powers.
- Jan. 27, 1993 Ran Quail briefs William Rowat of the Privy Council Office on Airport Terminal Development Group and Paxport proposal to join forces. Rowat prepares memo for Glen Shortliffe.
- Jan. 28, 1993 Preparation of a list of issues for discussion at initial meeting with Paxport following the merger.
- Jan. 28, 1993 Meeting of Wood Gundy, Paxport and Transport Canada official regarding financeability.
- Feb. 1, 1993 Paxport and Airport Terminal Development Group announce a joint venture partnership which became T1/T2 Limited, later known as Mergco and later the Pearson Development Corporation. The names of all partners and proposed percentage interests is set out.
- Feb. 3, 1993 Glen Shortliffe prepares Memorandum for the Prime Minister on status of Airport Terminal Development Group-Paxport joint proposal for redevelopment of T1/T2.

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Feb. 11, 1993	Greater Toronto Regional Airport Authority receives briefing from two Department of Transport official on the Airport Transfer Process and the 36 Supplementary Principles.
Feb. 12, 1993	Ran Quail advises that he has been appointed Deputy Minister of Public Works and that a new Chief Negotiator will have to be named. Letter to extend deadline for demonstrating financeability is sent to Jack Matthews.
Feb. 17, 1993	City of Mississauga passes resolution supporting establishment of Local Airport Authority.
Feb. 18, 1993	Announcement of Government decision to proceed with Runway Construction projects at Pearson International Airport.
Feb. 19, 1993	William Rowat prepares update on redevelopment memo for Glen Shortliffe. Prospects for a deal do not seem great".
Feb. 19, 1993	Victor Barbeau briefly assumes role as Chief Negotiator replacing Ran Quail.
Feb. 22, 1993	Deloitte & Touche study on financeability of Paxport concludes that about 58 million can be funded by the participants.
Feb. 26, 1993	Jack Matthews writes to Huguette Labelle suggesting that Paxport has provided all necessary proof of financeability. Requests that negotiations begin immediately.
Mar. 3, 1993	Paxport rejects opinion of Deloitte & Touche regarding financeability.
Mar. 3, 1993	Memorandum of agreement between Allders and Paxport including loan of 29 million dollars to Paxport.
Mar. 9, 1993	Gerry Meinzer, Interim Chair of the Greater Toronto Regional Airport Authority, writes to Minister Corbeil informing him of the creation of the Greater Toronto Regional Airport Authority which is in the process of incorporation. Seeks formal endorsement of the minister of Transport.
Mar. 12, 1993	Mel Cappe of Treasury Board provides Deputy Minister Ian Clark with update on the status of negotiations. Notes that Paxport unhappy at what they see as bureaucratic stalling.
Mar. 15, 1993	Jack Matthews letter to Minister Corbeil expressing unhappiness with delays. Requests a date be set for completion of negotiation -- May 15, 1993.
Mar. 19, 1993	Dave Broadbent appointed Managing Consultant and Chief negotiator for the project.
Mar. 22, 1993	Memorandum updating Prime Minister on Redevelopment Progress from Glen Shortliffe.
Mar. 23, 1993	David Broadbent meets with Jack Matthews Peter Coughlin and others to set up a work plan and to consider approach to dealing with Air Canada.

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Mar. 26, 1993	Meeting between Dave Broadbent, Keith Jolliffe, two Justice lawyers and Jack Matthews, and Peter Coughlin to discuss arrangements for negotiations. "Blockers and Issues" paper distributed to them.
Mar. 30, 1993	Meeting between Glen Shortliffe and Dave Broadbent with Peter Coughlin and Charles Bronfman to discuss various issues involved in the deal. Jack Matthews, Peter Coughlin and others meet Dave Broadbent for further discussion of Blockers and other issues.
Mar. 31, 1993	Workplan proposal for negotiations prepared by Dave Broadbent.
Apr. 2, 1993	Deputy Ministers meeting to assess the T1/T2 file which is characterized as "extremely messy."
Apr. 5, 1993	Pearson Development Corporation and Transport Canada negotiating teams meet to establish timetable.
Apr. 7, 1993	Memo from Glen Shortliffe to Prime Minister about continuing uncertainty regarding merger. Deadline is June 1 for a deal.
Apr. 12, 1993	Ellis Don withdraws; Wood Gundy Capital withdraws from Paxport Group; rate of return not high enough.
Apr. 21, 1993	Ontario Minister of Transport, Gilles Pouliot, writes to Gerry Meinzer endorsing the Greater Toronto Regional Airport Authority and asking it to resolve outstanding issues among the 5 local governments.
Apr. 21, 1993	Transport Canada's proposed Management and Operation Plan given to Paxport.
Apr. 28, 1993	Summary of Structure and partnership arrangements between the Paxport group and the Airport Terminal Development Group.
May 3, 1993	Robert Bandeen, newly appointed Chairman of Greater Toronto Regional Airport Authority writes to Minister of Transport asking to begin negotiations for the transfer of Pearson to them. Asks for meeting with Minister.
May 3, 1993	Agreement signed by Peter Coughlin and Jack Matthews to create Pearson Development Corporation. Management and operations plan submitted by Jack Matthews Airport Terminal Development Group sends letter asking to withdraw its proposal and requests return of security deposit.
May 4, 1993	Announcement that negotiation commenced.
May 5, 1993	Pearson Development Corporation Plan presented containing certain changes from the original Paxport proposal.
May 5, 1993	Construction starts for North South Runway at Pearson Airport
May 6, 1993	Minister Corbeil asks Gerry Meinzer to resolve the many outstanding issues stemming from the local/regional government resolutions.
May 11, 1993	Jack Matthews writes to Minister Corbeil regarding the process for T1/T2. Response on June 28.

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May 12, 1993	Trevor Carnahoff prepares position paper on Revised Terminal Plan prepared. Relates to revision to original Development Plan.
May 12, 1993	Wayne Power and Chern Heed oppose providing any guarantees of passenger levels. Dave Broadbent prepares memorandum on "Trigger Points and Stewardship".
May 13, 1993	Steven Shaw of Greater Toronto Regional Airport Authority writes to Michael Farquhar of Transport Canada to advise that the approved changes made by the Authority to the General Operating By-Law and the Nominating Process to make them acceptable to the federal government.
May 13, 1993	Meeting of Minister Corbeil and Robert Bandeen Chair and Anne Edgar Vice-Chair of the Greater Toronto Regional Airport Authority. It was agreed to provide the Minister with the necessary unequivocal local/regional government resolutions of support without qualification or reserve.
May 13, 1993	Region of Peel strongly opposes transfer of Pearson Airport without also including Island Airport.
May 17, 1993	Further memorandum from Dave Broadbent regarding Critical Issues in T1/T2 negotiations
May 18, 1993	Jack Matthews and Peter Coughlin write to Dave Broadbent about key issues to be resolved. Response from Broadbent. Counter proposal from Pearson Development Corporation.
May 20, 1993	Dave Broadbent response to Pearson Development Corporation counter proposal.
May 25, 1993	Details of arrangements between Alders and Pearson Development Corporation. Air Canada outlines it proposed payment terms in letter to Chern Heed. Accepted with some changes by Transport Canada on May 31 and by Air Canada on June 4.
May 27, 1993	Victor Barbeau asked by Deputy Minister of Transport, Huguette Labelle to leave the Department for four to five weeks because there was a perception that he was obstructing the privatization file.
May 31, 1993	Pearson Development Corporation asks Dave Broadbent to enter into agreement and appoint arbitrators to deal with outstanding issues.
June 8, 1993	Statement on Crown's position on a number of issues under negotiation prepared by Dave Broadbent. Proposed charging policy for T1/T2 and comments on it by Transport Officials.
June 14, 1993	William Rowat memo to Glen Shortliffe re Strategy to handle Air Canada lease situation including agreement with Pearson Development Corporation for access rights to redevelop T2, including compensation for unamortized value of Air Canada's investment in T2.
June 15, 1993	Deputy Ministers meeting to discuss status of T1/T2 project and the departure of Dave Broadbent.
June 15, 1993	William Rowat moved from the Privy Council Office to Transport where he becomes Associate Deputy Minister and takes over the Pearson negotiations.

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June 15, 1993	Robert Bandeen wrote Minister Corbeil enclosing local/regional government resolution and asking for formal endorsement of the Minister to start airport transfer negotiations on an urgent basis.
June 16, 1993	Letter from Huguette Labelle to Air Canada and to partners in Pearson Development Corporation acknowledging that Air Canada may have a 20 year commitment and two 10 year options.
June 18, 1993	Huguette Labelle on behalf of Minister of Transport and Pearson Development Corporation sign a letter of understanding which was not legally binding. "The parties shall make reasonable efforts to finalize all the Final Documents on or before July 15, 1993."
June 25, 1993	Kim Campbell succeeds Brian Mulroney as Prime Minister.
June 25, 1993	Jocelyne Bourgon named Deputy Minister of Transport. Huguette Labelle moves to Canadian International Development Agency.
June 28, 1993	Alan Tonks writes to Minister Corbeil about support for Local Airport Authority
June/July, 1993	Pearson Development Corporation meetings with Air Canada and with William Rowat.
July 1993	Peat Marwick prepare Statements for Airport Revenue and Cost for year ended March 31, 1992
July 3, 1993	Victor Barbeau reintegrated to his position as Assistant Deputy Minister.
July 7, 1993	Victor Barbeau prepares background brief for Jocelyne Bourgon on Airport Transfers and Toronto Local Airport Authority.
July 7, 1993	Provisions of Ground Lease respecting Leasehold Mortgagees sent to Robert Vineberg by Jacques Pigeon.
July 8, 1993	Minister Corbeil meets Robert Bandeen with respect to requirement for unconditional local/regional government resolutions endorsing the Greater Toronto Regional Airport Authority.
July 8, 1993	Jack Matthews and Peter Coughlin meet Minister Corbeil to review the direction of current negotiations, particularly regarding Air Canada's tenancy. They say negotiations with Air Canada are at a standstill because they have a vested interest in the status quo. They ask the Minister to consummate the deal that will make Pearson Development Corporation Landlords so as to facilitate the signing of an agreement between them and Air Canada. William Rowat prepares briefing note for Minister to deal with this and other questions.
July 9, 1993	Minister of Transport meets the Mayor of Mississauga regarding the need for a resolution of unconditional support for the Greater Toronto Regional Airport Authority without the requirement for, but not necessarily foreclosing the possibility of, a subsequent transfer of the Toronto Island Airport.
July 13, 1993	William Rowat informs Pearson Development Corporation that Minister wants Local Airport Authority principles followed in relation to leasehold mortgage provisions. Will Lipson of Peat Marwick provides Norman Spencer with analysis of Guiding Principles for Air Canada Lease Agreement.

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July 14, 1993	Memo on "Nightmare Scenarios" in case Air Canada and Pearson Development Corporation cannot come to agreement.
July 16, 1993	Will Lipson of Peat Marwick provides Norman Spencer with analysis of Pearson Airport Ground Rent contract.
July 21, 1993	Pearson Development Corporation Agreement in principle with Air Canada on a 37 year lease at closing of deal.
July 27, 1993	William Rowat asks Pearson Development Corporation to accept 15% reduction for airlines lease and share 10% of net income with airlines. Summary of the status of negotiations prepared by Wayne Power.
Aug. 1993	Claridge acquires 15% more of Pearson Development Corporation.
Aug. 3, 1993	Cabinet Committee on Operations meets to discuss redevelopment of Pearson Terminals 1 and 2.
Aug. 4, 1993	Request for Proposals for runway Development and operation - includes financing, design and construction.
Aug. 10, 1993	Memorandum from William Rowat, outlining the remaining steps before an agreement can be signed. Likely closing date to be end of September.
Aug. 11, 1993	Minister Corbeil asks Mayor Hazel McCallion of Mississauga for resolution of unconditional support. Also letter to Robert Bandeen on this point.
Aug. 17, 1993	Deloitte & Touche provide William Rowat with opinion on financeability of Pearson Development Corporation.
Aug. 18, 1993	Robert Bandeen wrote to Minister Corbeil asking that Greater Toronto Regional Airport Authority be formally endorsed by the federal government without the requirement of a new resolution from the City of Mississauga.
Aug. 27, 1993	Order-in-Council authorizes the Government to enter into agreement to lease T1/T2.
Aug. 30, 1993	Minister Corbeil announces agreement reached with Pearson Development Corporation to redevelop and operate Terminal 1 and Terminal 2.
Sept. 8, 1993	Federal election called.
Sept. 13, 1993	Federal officials meet with Ministry of Transport Official from Ontario.
Sept. 21, 1993	National Transportation Agency determines that transfer of the operations and management of Pearson is not subject to Part VII of the <i>National Transportation Act</i>).

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Sept. 21, 1993	Letter between Air Canada and the Government confirming that an agreement has been reached between Air Canada and Pearson Development Corporation. Air Canada to receive 15% deferment of its ground rent. Approved by Air Canada Board of Directors on Sept 24.
Sept. 25, 1993	<i>Ottawa Citizen</i> publishes article by Greg Weston critical of the Pearson deal. Another article on September 26.
Sept. 27, 1993	William Rowat prepares response to <i>Ottawa Citizen</i> articles.
Oct. 1, 1993	Advance ruling obtained from Bureau of Competition Policy. Not sufficient grounds to apply to the Competition Tribunal.
Oct. 4, 1993	Pearson Development Corporation agrees to pay Matthews Investments Inc a consulting fee of \$350,000 per annum for ten years payable monthly starting on Oct. 31, 1993.
Oct. 5, 1993	Ontario Transport Minister Gilles Pouliot writes to Minister Corbeil urging Ottawa to set aside the final agreement.
Oct. 6, 1993	Economic Development and Planning Committee of the Municipality of Metro Toronto recommends that the Federal Government not proceed with privatization of terminal and runways at Pearson until a Local Airport Authority has an opportunity to be involved in the decisions.
Oct. 7, 1993	William Rowat receives a written Directive from Jocelyn Bourgon that the Prime Minister has instructed the negotiator to proceed with the signature of the remaining legal documents on Oct. 7, 1993.
Oct. 18, 1993	City of Toronto forwards motion requesting the Government of Canada to reverse its decision on privatization pending further consideration.
Oct. 25, 1993	Federal Election.
Oct. 26, 1993	T1/T2 agrees to postpone the Commencement date to Dec. 15, 1993.
Oct. 26, 1993	John Desmarais prepares paper on Redevelopment options.
Oct. 28, 1993	Paul Stehelin of Deloitte Touche writes to Keith Jolliffe of Transport Canada with an estimate of the cost of cancellation. (Between \$615 and 1,330 million.)

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Cancellation of the Agreement

Oct. 27, 1993	Robert Nixon receives phone call from Jean Chrétien who asks him to analyse the Pearson contract.
Oct. 28, 1993	Robert Nixon meets with Jean Chrétien and Ed Goldenberg who ask him to inquire into Pearson Airport Agreement. Also engaged are Crosbie and Company.
Oct. 29, 1993	Document "T1/T2 Privatization" faxed by William Rowat to Robert Nixon. Stan Keyes MP of Hamilton West writes to Mr. Nixon to express concern about the exclusion of airside development within 70 kilometres of Pearson Airport.
Oct. 29, 1993	Robert Nixon meets Stephen Goudge and Brad Wilson.
Oct. 31, 1993	Robert Nixon and Stephen Goudge meet Gardner Church.
Nov. 1, 1993	Robert Nixon meets with Hazel McCallion, William Rowat, John Desmarais and Wayne Power.
Nov. 1, 1993	Memorandum concerning Nixon contract prepared by Morris Rosenberg for Glen Shortliffe.
Nov. 1, 1993	Seventeen government documents sent to Robert Nixon by Transport Canada including three Treasury Board submissions.
Nov. 1, 1993	Original Commencement date for transfer of T1/T2 to Pearson Development Corporation. Glen Shortliffe asks parties to agree to a 45 day delay to give the new government time to study the agreement.
Nov. 2, 1993	Robert Nixon meets with Allan Tonks who urges Mr. Nixon to recognize the Greater Toronto Regional Airport Authority.
Nov. 2, 1993	Robert Nixon meets Council of Concerned residents. Wayne Power sends Robert Nixon closing documents that have been publicly released and Paxport Proposal Business Plan. Stephen Goudge asks William Rowat to provide a legal opinion as to whether there was a binding agreement with federal government as of Oct. 7.
Nov. 3, 1993	Robert Nixon meets with Peter Coughlin and Pearson Development Corporation officials also with Mississauga Board of Trade and with Huguette Labelle.
Nov. 4, 1993	Robert Nixon meets with Robert Bandeen and Local Airport Authority. Also meeting with Ontario Premier Bob Rae and Minister of Transportation Gilles Pouliot.
Nov. 4, 1993	Chrétien Ministry sworn into office. Doug Young named Minister of Transport.
Nov. 4, 1993	A revised and expanded version of the Oct. 29 briefing paper is prepared by Department of Transport.
Nov. 5, 1993	Gordon Dickson of Cassels Brock provides Stephen Goudge with excerpts from the various agreements which they believe are the most directly relevant to the inquiry

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Nov. 5, 1993	Robert Nixon meets with Peter Kozicz and Jack Matthews of Paxport.
Nov. 8, 1993	Robert Nixon meets with Crosbie and Company. They provide a draft workplan and schedule for the Report.
Nov. 9, 1993	Wayne Power provides Stephen Goudge with list of documents not released to the public for reasons of corporate confidentiality. Robert Vineberg sends Stephen Goudge booklet summarizing the various agreements.
Nov. 10, 1993	Mississauga Council adopts resolution called for Robert Nixon to hold public hearings on the runway expansion proposal.
Nov. 10, 1993	Robert Nixon meets Morrison Hershfield Group.
Nov. 11, 1993	List of fees paid by Claridge to consultants provided to Stephen Goudge.
Nov. 12, 1993	Chern Heed provides Robert Nixon with financial information on Pearson International Airport. Laurie Barrett of Osler, Hoskin and Harcourt provides copy of Ground Lease and other documents relating to Vancouver International Airport.
Nov. 15, 1993	Meeting of Gordon Dickson of Cassels Brock with Stephen Goudge and R.J. Green and Jacques Pigeon of Justice and John Desmarais of Transport Canada. Copies of several legal documents provided the following day.
Nov. 15, 1993	Robert Nixon requests information from Transport Canada regarding operation of T1/T2. Response by John Desmarais on Nov. 22.
Nov. 17, 1993	Robert Nixon meets with Board of Trade of Metro Toronto.
Nov. 18, 1993	Ontario Government submission to Nixon Committee. Critical of various aspects of the Pearson lease.
Nov. 18, 1993	Crosbie and Company prepare Review of Pearson International Airport for presentation to Robert Nixon. Concludes that internal rate of return to investor at T1/T2 about 14% (or 23% pretax).
Nov. 18, 1993	Crosbie, Nixon and Goudge meet to determine final position and documentation to accompany the final report.
Nov. 25, 1993	Chern Heed, manager of Toronto Airport, takes a job as commercial director of Hong Kong airport authority.
Nov. 26, 1993	Further study by Crosbie and Company on rates of return.
Nov. 29, 1993	Letter from Robert Nixon to Jean Chrétien with copy of report.
Dec. 3, 1993	Release of Nixon report and press release.

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Dec. 11, 1993	In a letter to <i>Ottawa Citizen</i> Ray Hession calls for investigation by the Auditor General to clear the name of those businessmen whose reputations were damaged from the cancellation.
Dec. 13, 1993	In response to request from Minister Young to further extend the commencement date to Jan. 30, T1/T2 partnership says this is unacceptable unless Government agrees to go ahead with deal at this time.
Dec. 14, 1993	Minister Young asks T1/T2 to surrender their interests in the Lease and reconvey the Premises to Her Majesty on a "without prejudice" basis.
Dec. 15, 1993	Scheduled Transfer Date of T1/T2 to Pearson Development Corporation (before deal was cancelled).
Dec. 15, 1993	Robert Vineberg writes to Stephen Goudge about inaccuracies in Nixon report.
Feb. 1994	Royal Bank pushes Matthews Group and Matthews Construction into receivership.
Mar. 1994	Robert Nixon appointed Chairman of Atomic Energy of Canada.
Apr. 1994	Negotiations over compensation break down. Pearson Development Corporation seeking around 200 million including foregone profits and lobbying fees. Out of pocket expenses are in the range of 30-40 million.
Apr. 13, 1994	First reading of Bill C-22 in the House of Commons.
May 9, 1994	Nick Mulder named Deputy Minister of Transport.
May 26, 1994	House Standing Committee on Transport hears from Ray Hession and Robert Vineberg.
May 31, 1994	House Standing Committee on Transport hears from Air Canada, Donald Matthews, and Douglas Young.
June 9, 1994	Standing Committee on Transport hears from Jean Desmarais and Jacques Pigeon General.
June 9, 1994	Reform Transport Critic Jim Gouk proposes amendments to C-22 to allow standing committee on Transport to study all claims for compensation and make recommendations.
July 6, 1994	Senate Legal and Constitutional Affairs Committee recommends to permit full compensation up to Apr. 13, 1994.
July 13, 1994	New National Airport Policy published. Proposed establishment of Canadian Airport Authorities with provision for appointment of some members by federal government.
Sept 16, 1994	Lawsuit for breach of contract launched by 9 members of the Pearson Development Corporation.
Nov. 1, 1994	William Dimma and Joanne Yaccato are federal nominees to the Pearson Canadian Airport Authority.

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Dec. 2, 1994	Minister Young and Robert Bandeen sign a letter of intent to turn Pearson over to a non profit airport authority.
Dec. 8, 1994	In the House of Commons Prime Minister Chrétien denies speaking to Jack Matthews about the Pearson proposal when he was in law practice with Lang, Michener.
Jan. 30, 1995	Pearson Development Corporation wins right to sue federal government in a decision of the Ontario Court, General Division.
Mar. 27, 1994	Jocelyne Bourgon named Clerk of the Privy Council.
Mar. 28, 1995	Baker Report to the Senate Committee on Legal And Constitutional Affairs Respecting C-22.
May 4, 1995	Senate adopts motion to establish a special committee.
May 23, 1995	Ontario Court of Appeal dismisses a government appeal of a lower-court ruling that declared Ottawa was liable for cancellation of the contracts.
July 11, 1995	Special Senate Committee begins hearings
December 1995	Report of Special Senate Committee

Appendix C - Biographical Notes Relating to the Pearson Airport Agreement

AGRA Industries Limited. An international company involved in two core business areas: Engineering Construction and Technology; and Resource Recovery and Recycling. William Pearson President.

Airport Development Corporation. Chosen by the Government as the preferred developer to construct and operate Terminal 3 at Pearson Airport. Included Huang & Danczkay Properties and Lockheed Air Terminals, also Scott and Associates, Marshall Macklin Monaghan, Murray and Co.

Airport Terminal Development Group Inc. An Ontario Limited partnership. Peter Coughlin, President, Norman Spencer, Vice President. One of two groups (along with Paxport) whose proposal was considered by the Proposal Evaluation Committee. A wholly owned subsidiary of Toronto Airport Terminals Investors Inc which is controlled jointly by Charles R. Bronfman and the Charles R. Bronfman Trust.

Allders International. Duty free operator with outlets in 13 Canadian airports including Terminal 3. It is owned by AGRA Industries Limited. Scott McMaster President (Canada).

***Baker, Gordon R.** Counsel to Matthews Investments and to the Paxport Group with respect to negotiations with Claridge. Director and Member of Management Committee of Pearson Development Corporation. Prepared submission to the House Transport Committee on May 31, 1994 and the Senate Committee on Legal and Constitutional Affairs, March 28, 1995.

***Bandeem, Robert.** Former President of Canadian National. Head of Greater Toronto Regional Airport Authority. Interested in taking over Pearson and run it as a Local Airport Authority.

***Barbeau, Victor.** Assistant Deputy Minister, Transport Canada, in charge of Airports.

***Berigan, Gerry.** Corporate Planner of Special Projects at Transport Canada.

Bouchard, Benoit. Minister of Transport April 1988 - February 23, 1990.

***Bourgon, Jocelyne.** Deputy Minister of Transport 1993-1994; Clerk of the Privy Council since 1994.

Bracknell Corp. Construction company. George Ploder, President.

***Broadbent, David.** Asked by Huguette Labelle to come it to take over as Chief negotiator for Transport Canada in March 1993. Left in July 1993.

Bronfman, Charles. Quebec businessman. Claridge Investments.

Campbell, Kim. Prime Minister at the time the Pearson agreement was signed.

Canadian Airports Limited. Included Ellis-Don Construction, Zeidler Roberts, Confederation Life, Toronto Dominion Bank, Cogan Corp. and British Airport Authority. Made unsolicited and unsuccessful proposal to privatize Pearson.

Cassels, Brock & Blackwell. Retained to provide legal Counsel to Department of Transport during negotiations.

Chrétien, Jean. Elected Leader of the Liberal Party in June 1990. Became Prime Minister of Canada in November 1993

Appendix C - Biographical Notes Relating to the Pearson Airport Agreement

***Church, Gardner.** Former Deputy Minister for the Government of Ontario

CIBC Wood Gundy Capital Inc. A Joint Venture Company formed in 1989 between Canadian Imperial Bank of Commerce and its subsidiary Wood Gundy Inc. Former partner of Paxport.

Claridge Properties Ltd. Competitor of Paxport. Consists of the Charles R. Bronfman Trust and Lockheed Corporation or their related companies. Unsuccessful bidder on the original Request for Proposal. Later merged with Paxport to create Pearson Development Corporation.

***Clayton, Al.** Executive Director, Bureau of Real Property and Material, Treasury Board Secretariat

***Corbeil, Jean.** Minister of Transport April 22, 1991 to November 4, 1993.

***Coughlin, Peter.** President of Claridge. CEO of Pearson Development Corporation. President and CEO of several other associated companies.

Crosbie, John. Minister of Transport, from 1986-1988

***Crosbie Allan.** Principal in Crosbie and Company Inc (Toronto). Advisor to Robert Nixon on financial aspects of the agreement

Deloitte & Touche Inc. Retained by the Department of Transport to assess Paxport's demonstration of financeability. Reported that the value to the Crown of Paxport proposal was \$800 million.

***Desmarais, John.** A Senior Advisor of Operations, Airport Group, Department of Transport. One of the principal negotiators of the airport contracts. Also involved in preparing the Request for Proposal and in evaluating proposals that were submitted.

***Dickson, D G.** Director General of Finance at Transport Canada.

***Doucet, Fred.** Lobbyist hired by Paxport.

***Douglas, Austin.** Former Associate Director of Airport Group, Transport Canada.

***Edlund, Constance.** Acting Director, Small Business Loans Administration. She undertook an evaluation of the Paxport proposal for the Ministry of Industry.

Ellis-Don Inc. A large Canadian construction company founded in 1951. Partner with Paxport until withdrawing. Donald J. Smith, Chairman and CEO at the time of the involvement with Paxport.

***Farquhar, Michael.** Director General Corporate Planning/Airport Transfers with Transport Canada.

***Fiore, Dominic.** Director of Real Estate for Air Canada at the time of the deal.

***Fox, William.** Lobbyist for Claridge.

***Goudge, Stephen.** Counsel for Robert Nixon regarding Pearson investigation.

Appendix C - Biographical Notes Relating to the Pearson Airport Agreement

- *Green, Robert.** Lawyer from Justice asked by Dave Broadbent to join negotiation team at Transport.
- *Harrema, Gary.** Chairman of the Regional Municipality of Durham.
- Heed, Chern.** Former manager at LBPIA.
- *Hession, Raymond.** Chairman of Paxport at the time it made its successful proposal to develop and manage Terminals 1 and 2. Presently CEO of Hession, Neville and Associates.
- Huang, Michael.** Businessman in Toronto and partner with Bela Danckzkay in consortium formed to build Terminal 3.
- Jelinek, Otto.** Former Minister of Revenue. Later did work for Matthews Middle East and Asia Inc.
- Jcanniot, Pierre.** Former President of Air Canada
- *Jolliffe, Keith.** Financial Advisor to Transport Canada. Worked with various Transport Canada negotiators.
- *Kozicz, Peter.** Senior Vice-President, Pearson Development Corporation.
- *L'Abbée, Robert.** Member of management consulting firm Raymond, Chabot, Martin, Paré hired to audit the Proposal evaluation process.
- *Labelle, Huguette.** Deputy Minister of Transport 1990 - 1993.
- *Lane, Ron.** Former Chairman of the Evaluation Committee.
- Legate, John.** Lobbyist hired by Paxport.
- LeLay, Richard.** Chief of Staff to Minister of Transport, Jean Corbeil.
- *Lewis, Doug.** Minister of Transport February 23, 1990 - April 22, 1991.
- LAH Ltd (744221 Ontario Inc).** Established November 12, 1987. Wholly owned by Lockheed Air Terminals Inc (Delaware) which is 100% owned by Lockheed Corporation (Delaware). Was a partner with ATDG in making a proposal for T1/T2 Project. Officers: Jerry Cance, Robert Shirriff, Assistant Secretary.
- Martin, Shirley.** Former Parliamentary Secretary to Minister of Transport.
- Matthews Group Limited.** Established in London, Ontario in 1953 and has become an international development company. Main partner in Paxport which made the best overall acceptable bid for Pearson Airport.
- *Matthews, Donald.** Co-founder, Chairman and CEO of Paxport Inc and Chairman and CEO of Matthews Group Limited.
- *Matthews, Jack.** CEO Paxport replaced Ray Hession after the Pearson contract was awarded to Paxport. Negotiated merger with Claridge to create Pearson Development Corporation.
- Mazankowski, Don.** Minister of Transport, September 17, 1984 to April 1988.

Appendix C - Biographical Notes Relating to the Pearson Airport Agreement

***McCallion, Hazel.** Mayor of Mississauga.

McMaster, Scott. Pearson Development Corporation Director, General Manager of Allders International Canada Ltd. and spokesman for group seeking compensation.

***Meinzer, Gerald.** Former Interim Chair of Greater Toronto Regional Airport Authority.

Mergeco. The partnership of Claridge Group and Paxport Group with respect to Terminals 1,2,3. Later became Pearson Development Corporation.

***Metcalf, Herb.** Liberal organizer and President of Capital Hill Group. Lead lobbyist for Claridge Properties.

***Mulder, Nick.** Deputy Minister of Transport since September 1994.

Mulroney, Brian. Prime Minister of Canada from 1984 to June 1993.

***Near, Harry.** Lobbyist hired by Claridge.

***Neville, William.** Lobbyists hired by Paxport.

Nixon, Robert. Prepared Report on the Pearson Airport deal.

NORR Partnership Limited. An architectural and engineering firm. Its subsidiary, NORR Airport Planning Associates has acted as project manager on 50 airport project including renovation to Terminal 2.

***Pascoe, Andrew.** Lobbyist for Paxport.

Paxport Inc. A consortium composed of Matthews Investment (32%), CIBC/Wood Gundy (13%), Alders (13%), Bracknell (13%) MGL, Agra, NORR, Sunquest and other related entities.

Price Waterhouse. Served as Evaluation Process consultant -- responsible for process development, format, security of the Request for Proposal.

Pearson Development Corporation (1032156 Ontario Inc). Established on June 3, 1993. This was to be the managing general partner for the partnership between the Claridge Group and the Paxport Group. The Board of Directors of the Pearson Development Corporation acted as a Management Committee in respect of the two partnerships. The Board comprised eight persons four of whom were named by each group. The Management Committee operated by majority except for a limited number of matters requiring unanimity. Officers included: Peter Coughlin, Chairman; John Pitcher, President and CEO; Norman Spencer, Executive Vice-President; Peter Kozicz, Senior Vice-President, Boon Khaw, Senior Vice President, Robert Vineberg, Secretary, Robert Abrams, Assistant Secretary, Richard Lachcik, Director.

Pearson, William. President Agra Industries.

Peat Marwick Thorne. Accounting firm did estimate of return to Government from the deal.

Appendix C - Biographical Notes Relating to the Pearson Airport Agreement

***Pigeon, Jacques.** General Counsel, Department of Justice.

Ploder, George. President, Bracknell Corporation.

***Power, Wayne.** Director of Transition, Pearson International Airport.

***Quail, Ranald.** Associate Deputy Minister of Transport Canada and for a brief period Chief negotiator for Transport Canada before being replaced by David Broadbent.

Raymond, Chabot, Martin, Paré. Management consulting firm audited evaluation process.

Riopelle, Hugh. Lobbyist hired by Paxport. Former Air Canada PR representative.

***Rowat, Willam A.** Moved to Transport from PCO as Associate Deputy Minister just before Huguette Labelle left. Took over negotiations on behalf of Transport Canada from Dave Broadbent. He was Chief Negotiator at the time of closing. Now Deputy Minister in Fisheries and Oceans.

***Shortliffe, Glen.** Deputy Minister of Transport 1988 - 1990. Clerk of the Privy Council until 1993.

***Simke, John.** Advisor for Price Waterhouse, engaged by Transport.

***Sinclair, Gordon.** Former President of the Air Transport Association of Canada.

***Spencer, Norman.** Pearson Development Corporation Vice-President.

***Stehelin, Paul.** Author of study on T1/T2 for Deloitte & Touche.

Sunquest Vacations Limited. Canada's largest independent tour operator. All its tours arrive and depart from LB Pearson International Airport.

***Swain, Harry.** Deputy Minister, Department of Industry.

Swirsky, Ben. Chair CEO of Bramalea.

Torchinsky, Ben. Chair of Agra Industries owners of Allders.

T1/T2 Limited Partnership. Contractor with the federal government for the redevelopment of Pearson International Airport. The partners of T1/T2 are the Claridge Group, Agra Industries, Allders Canada Inc., the Bracknell Corporation, Hartay Enterprises, Lockheed Corporation, Matthews Group, Matthews Investment, and NORR Group Consultants.

T3LPCO Investment Inc. Investment Company operating Terminal 3 at Pearson. Officers: Peter Coughlin President, Norman Spencer, Vice-President, Robert S. Vineberg, Secretary, Robert J. Abrams, Assistant-Secretary.

***Vineberg, Robert.** Legal Counsel, Pearson Development Corporation.

***Warrick, Ed.** Former Project General Manager, Major Crown Projects.

Appendix C - Biographical Notes Relating to the Pearson Airport Agreement

Withers, Ramsay. Deputy Minister of Transport 1983 - 1988. In 1992 he became a lobbyist for Claridge Properties.

Wood Gundy Capital. Paxport shareholder. Withdrew during evaluation phase.

Wright, Robert. Hired to determine claims as a result of cancellation of contract. Former law partner of Jean Chrétien.

Young, Douglas. Minister of Transport. Testified to House Committee on Transport and Senate Committee on Legal and Constitutional Affairs regarding Bill C-22.

* Indicates they appeared as witness. See Appendix A.

Appendix D - Second Report of the Special Committee

TUESDAY, October 17, 1995

The Special Committee of the Senate on the Pearson Airport Agreements has the honour to present its

SECOND REPORT

On May 4, 1995, pursuant to a motion adopted by the Senate, your Committee was appointed to "examine and report upon all matters concerning the policies and negotiations leading up to, and including, the agreements respecting the redevelopment and operation of Terminals 1 and 2 at Lester B. Pearson International Airport and the circumstances relating to the cancellation thereof".

In order to carry out this mandate, it is crucial that your Committee be granted access to the Treasury Board Submissions of August 1993 concerning the Pearson Airport Agreements. Your Committee is satisfied that the release of these documents is in the public interest and constitutes a reasonable exception to the customary practice of respecting Cabinet confidentiality.

Therefore your Committee recommends that a humble address be presented to His Excellency the Governor General praying that he will cause to be laid before the Senate a copy of the Submissions to Treasury Board in August 1993 relating to the Pearson Airport Agreements.

Respectfully submitted,

FINLAY MACDONALD
Chairman

The following report was prepared for Prime Minister Chrétien by Robert Nixon and delivered to him on November 29, 1993. It was made public on December 3, 1993.

Over the course of the last 30 days, I have had the opportunity to review the agreement to privatize and redevelop Terminals 1 and 2 at Pearson Airport in Toronto. I have had counsel and business analysts consider all the contract documents making up that agreement. I have also had the opportunity to meet with a number of the individuals involved to gain an understanding of the agreement and the processes that led up to it. What follows is the result of what I have learned.

1. THE PROCESS TO PRIVATIZE TERMINALS 1 AND 2 AT PEARSON

On April 8, 1987, the Government of Canada issued its policy on a future framework for the management of airports in Canada. This policy together with the supplementary principles thereto focused very largely on the ownership and operation of airports by Local Airport Authorities. Only passing mention was made of private sector leasing as something which would be considered.

On June 22, 1987, the Government of Canada selected the Airport Development Corporation as the preferred developer to construct and operate Terminal 3 at Pearson. The Matthews Group of Companies sponsored an unsuccessful bid in this competition.

In September, 1989, the Matthews Group submitted an unsolicited proposal to the Government of Canada to privatize Terminals 1 and 2 at Pearson. This proposal was not accepted.

On October 17, 1990, the Government announced that private sector participation in the modernization of these two Terminals would be sought through a future Request For Proposals process. No details were provided.

On February 21, 1991, Terminal 3 opened for business. By this time Claridge Holdings Inc. (Claridge) had assumed effective control of Terminal 3.

On March 11, 1992, the Government of Canada issued a Request For Proposals (RFP) for the privatization and redevelopment of Terminals 1 and 2 at Pearson. Several aspects of this deserve highlighting. Firstly, the RFP preceded a decision on the proposed expansion of the runway system at the airport. Secondly, it called for a one-stage process. The competition for Terminal 3 involved a two-stage process, initially soliciting interested parties

Appendix E - Report by Robert Nixon

and selecting a short list of bidders, and then encouraging detailed submissions. Thirdly, the RFP did not set out many of the fundamental aspects of the proposed development, but left these to bidders to define for themselves. For example, projected passenger volumes, for the airport (fundamental to the pace and size of the redevelopment) were left to proponents to estimate. Finally, only 90 days were provided for responses.

Only two bids were submitted, one by Paxport Inc., controlled by the Matthews Group and the other by a group controlled by Claridge.

On December 7, 1992, Paxport Inc. was announced as the best overall acceptable proposal. It was required to demonstrate by February 15, 1993 to the satisfaction of the Government that its proposal was financially viable. Because Paxport could neither provide evidence of this, nor, according to its President, raise capital from other sources, it turned to Claridge for financial support.

On February 1, 1993, Paxport Inc. and Claridge announced a joint venture partnership (which became T1 T2 Limited Partnership) to pursue the redevelopment project in accordance with the Paxport Inc. proposal.

Between that date and May 1993, the new joint venture engaged in discussions with the Government of Canada concerning the financial viability of the project and other critical issues such as the lease with Air Canada.

By May of 1993 these issues had been sufficiently addressed for formal negotiations to commence. Claridge had by this time obtained effective control of the joint venture.

On June 18, 1993, the parties to the negotiation, Pearson Development Corporation (on behalf of T1 T2 Limited Partnership) and the Government of Canada signed a letter of understanding indicating that major substantive elements in connection with the proposed agreement had been identified and were therein described on a basis acceptable to the parties. This was explicitly not a legally binding agreement.

On August 30, 1993, the Minister of Transport announced that a general agreement had been reached with Pearson Development Corporation to redevelop and operate Terminals 1 and 2 and indicated that this agreement would be finalized in the fall with a legal agreement for the long-term management, operation and redevelopment of the Terminals.

On September 8, 1993, the Government of Canada called a federal election. Through September the pending agreement was the subject of controversy in the media and in the election campaign.

Prior to the conclusion of the legal agreement the Leader of the Opposition (now the Prime Minister) indicated clearly that parties proceeding to conclude this transaction did so at their own risk and that a new government would not hesitate to pass legislation to block the privatization of Terminals 1 and 2 if the transaction was not in the public interest.

Appendix E - Report by Robert Nixon

In these circumstances, and one supposes because of a concern about the propriety of moving to conclude this agreement at that time, the chief negotiator for the Government of Canada sought written instructions about whether to complete the transaction.

On October 7, 1993, he received his written direction indicating that it was the explicit instruction of the Prime Minister that the transaction be concluded on October 7, 1993.

On October 7, 1993, therefore, the legal agreement to privatize and redevelop Terminals 1 and 2 was made.

2. THE AGREEMENT TO PRIVATIZE TERMINALS 1 AND 2 AT PEARSON

This agreement is an enormously complicated transaction. There are over 20 separate contracts, agreements, leases and sub-leases. The three principal agreements are the Ground Lease, the Development Agreement and the Management and Operations Agreement. The following represents some of the highlights of each of these.

The Ground Lease

The Parties: Her Majesty the Queen in Right of Canada as represented by the Minister of Transport leases the Terminal 1 and Terminal 2 complex to T1 T2 Limited Partnership (the Tenant). The beneficial ownership of T1 T2 Limited Partnership was made known to the Government of Canada but was not made fully public when the agreement documents were partially disclosed during the election campaign.

The Term: The lease and option period run for 57 years regardless of whether or not any development beyond Stage 1B of the Development Agreement takes place. That development is triggered by certain events including passenger throughput. If those events do not transpire, the lease continues although the development will not.

The lease is for 37 years. There is an option to a separate corporate entity (controlled by the Tenant) to lease the same premises for a further 20 years. The explicit purpose of this split was to permit the Tenant to avoid the payment of land transfer tax to the Province of Ontario in the amount of approximately \$10 million.

The Rent: The annual rent to the Government of Canada for the first 9 years begins at \$27 million annually and rises to \$30 million annually. Thereafter the rent is the greater of \$30 million annually adjusted for inflation and passengers, and a percentage of gross revenue.

There is a deferral of \$33 million of rent for lease years 2, 3 and 4, repayment to include interest. The result is that the actual rent in years 2, 3 and 4 of the lease will be substantially less than the \$26 million of net revenue obtained by Transport Canada from the same facility in fiscal 1993.

In the calculation of gross revenue (on which rent will be based), there are 10 deductions which I am advised are unusual in commercial transactions.

Sole Purpose Corporation: The lease does not restrict the freedom of T1 T2 Limited Partnership to carry out an undertaking other than the management, operation and maintenance of Terminals 1 and 2. Therefore, the financial health of T1 T2 Limited Partnership could be adversely affected by the financial failure of a venture which has nothing to do with the management, operation and maintenance of Terminals 1 and 2.

The Obligation to Maintain and Upgrade: The primary obligation on the Tenant is to operate Terminals 1 and 2 as a "first class air terminal". This standard, to which the Government of Canada can hold the Tenant, is that of "an air terminal facility that embodies the then current standards of air terminal facilities at major international airports and provides a high standard of services to the public and to air carriers". This obligation is subject to the qualification that the Tenant be able to recover its cost together with an investment return on such cost through incremental revenues derived from occupants, user charges or other revenue sources related to the T1 T2 complex.

The Passenger Threshold: The Government of Canada undertakes not to permit development of any airport facility within 75 km of the T1 T2 complex that would reduce passenger traffic at Pearson by more than 1.5 million persons per year, until the volume of passenger traffic at Pearson reaches 33 million people per year. Present projections predict this number to be reached by approximately the year 2005. If the Government of Canada chooses to engage in such proscribed development, it must either pay economic loss to the Tenant or provide the Tenant with access to Area 4 at Pearson, an area explicitly excluded from the RFP.

Remedies for Default: The Government of Canada, in the event of default, could enter the premises and operate them for the purposes of curing the default or terminate the lease. These are the two main remedial avenues available.

The Leasehold Mortgage: The Tenant has certain rights to enter into a leasehold mortgage with one or more lending institutions. If the mortgagee enforces its security it need not complete further stages of construction, and no consent of the Government of Canada is required if the mortgage assigns, leases or sublets the premises.

The Development Agreement

The Stages of the Project: Stage 1A is to commence within 30 days of the commencement date of the transaction and is to cost \$100 million. Stage 1B is to commence within 19 months of the commencement date and is to cost \$240 million. Stage 2 is to commence only after the number of passengers moving through Pearson has reached 22.4 million annually. This stage is to cost \$200 million. Stages 3 and 4 are to commence only after the passenger volume reaches 24.2 million annually and is to cost \$160 million.

Air Canada Default/Passenger Facility Charge (PFC): If Air Canada ceases to pay its rent due to inability to pay and a Stage is scheduled to commence and is required by the Government of Canada to commence, T1 T2 Limited Partnership is entitled to request the right to charge a PFC (i.e., an individual traveller charge) to provide the minimum revenue stream for the development. If the consent of the Government of Canada to apply a PFC is refused, T1 T2 Limited Partnership need not proceed with the development.

Terminal 1: T1 T2 Limited Partnership is obligated to keep Terminal 1 open until the commencement of Stages 3 and 4, estimated to be in 1999. If the capital cost of keeping T1 operational exceeds \$15 million the Government of Canada is obliged to pay one third of the excess. Should the passenger triggers for Stages 2, 3 and 4 be delayed, the obligation to keep T1 operational may well extend beyond 1999 at some cost to the Government of Canada. The RFP provided for no Government payments.

Non-Arms Length Transaction: About the end of September, 1993, T1 T2 Limited Partnership represented to the Government that it had entered into 10 contracts with non-arms length parties prior to October 7, 1993. One of these was said to be a construction management agreement with Matthews Construction. This information was not publicly disclosed. The Government has the right to see such contracts, but no further right in connection with them. The Government did not seek to exercise this minimal right in connection with the construction management agreement. Recently T1 T2 Limited Partnership has indicated that the construction project will in fact be tendered.

For non-arms length contracts entered into after October 7, 1993, the Government of Canada has no right to veto such contracts but only the right after the fact of the making of such contracts to require that they be at fair market value.

The Management and Operations Agreement

Pricing to the Airlines: The Tenant agrees not to impose fees and charges with respect to the use by air carriers of the T1 T2 complex inconsistent with the agreed pricing policy which is in essence a cost plus pricing policy. Clearly, costs to the airlines for their use of T1 T2 will rise very substantially by comparison with today.

Retail Pricing Policy: The standard concession lease will require that sub-tenants not be entitled to charge more than 15% above the average price of a comparable product offered in downtown Toronto.

Parking Pricing Policy: Public parking prices at T1 T2 shall conform with a price ceiling based on prices charged at not less than 10 major parking facilities in downtown Toronto. Current parking pricing is considerably below such a ceiling.

3. COMMENTS AND OPINION ON THE PROCESS

After permitting the privatization of Terminal 3 at Pearson, the process to privatize Terminals 1 and 2, the remainder of the largest airport in Canada, is inconsistent with the major thrust of the policy of the Government of Canada announced in 1987.

The RFP having as it did only a single stage and requiring proponents to engage in project definition as well as proposal submission and, all within a 90-day time frame, crated, in my view, an enormous advantage to a proponent that had previously submitted a proposal for privatizing and developing T1 and T2. Other management and construction firms not having been involved in the manoeuvring preceding the RFP had no chance to come up to speed and submit a bid in the short time permitted. With little construction and development occurring others should have been sought out and given reasonable time to participate.

Further, it is significant that no financial pre-qualification was required in this competition. For a project of this magnitude the selection of a "best overall acceptable proposal" without complete assurance of financial viability seems to me to have been highly unusual and unwise.

Finally, the concluding of this transaction at Prime Ministerial direction in the midst of an election campaign where this issue was controversial, in my view flies in the face of normal and honourable democratic practice. It is a well known and carefully observed tradition that when governments dissolve Parliament they must accept a restricted power of decision during the election period. Certainly the closing of a transaction of significant financial importance, sealing for 57 years the privatization of a major public asset should not have been entered into during an election campaign.

In summary, it is my opinion that the process to privatize and redevelop Terminals 1 and 2 at Pearson fell far short of maximizing the public interest.

4. THE POLITICS OF THE PROCESS

Because of the public controversy surrounding the awarding of this project, the politics of the process must be focused on.

The Role of Patronage: Donald Matthews, the principal of Paxport Inc., was Chairman of the Mulroney leadership campaign in 1983, President of the Progressive Conservative Party and Chief Fundraiser for that Party. Otto Jelinek, a Cabinet Minister in the Progressive Conservative government, did not seek re-election and is now on the board of Paxport Inc. and President of their Asian subsidiary. This, together with the flawed process I have described, understandably may leave one with the suspicion that patronage had a role in the selection of Paxport Inc.

The Role of the Lobbyists and Political Staff: It is clear that the lobbyists played a prominent part in attempting to affect the decisions that were reached, going far beyond the acceptable concept of "consulting". When senior bureaucrats involved in the negotiations for the Government of Canada feel that their actions and decisions are being heavily affected by lobbyists, as occurred here, the role of the latter has, in my view, exceeded permissible norms. As well, there was the perception that political staff were interested in this transaction to a highly unusual extent. Indeed this climate of pressure resulted in several civil servants being re-assigned or requesting transfer from the project.

The role of Competition: It must be remembered that the RFP implicitly indicated that competition between the lessee of Terminals 1 and 2 and Claridge, the lessee of Terminal 3, was desirable. Moreover, Paxport Inc. based its "best overall acceptable proposal" heavily on its competitive position vis-a-vis Terminal 3. However, after succeeding in the competition, Paxport Inc. could proceed only after Claridge took over financial responsibility for the project. Indeed, Claridge, whose bid provided a lower return to the Government of Canada and a lower cost to air Canada, found itself, after losing the bid, forced to accept a less advantageous position to save the Paxport bid. Once again, it appears that Paxport Inc. was receiving unaccountably favourable consideration in that it kept the bid despite the loss of competition.

The Role of the Local Airport Authority: The concept of an LAA has been used in Vancouver, Calgary, Edmonton and Montreal. The Pearson Airport community, the provincial government, local municipalities and business organizations expected a similar policy to be followed. Instead the Minister of Transport declined to recognize the local authority nominated by the Boards of Trade and supported by the local municipalities and regions. This steadfast refusal was based on what, in my view, was minor and normal inter-municipal strife. It is hardly therefore surprising that the perception existed that the Government's adamancy that a local airport authority not be recognized was simply to ensure no jeopardy to the award of this project to Paxport Inc.

5. COMMENTS AND OPINION ON THE AGREEMENT

According to a 1987 Transport Canada study, Pearson has a \$4 billion direct economic impact on the economy of the province of Ontario and was directly and indirectly responsible for over 56,000 Ontario jobs. It is by any estimation more than the sum of its parts or the total of its assets and liabilities. It is a critical national gateway and a hub service to travellers, families and shippers. It cannot be duplicated by any other facility in the area, indeed the province or the country. This combination of its economic and social importance to the region, the province and the country, and the fact that it is a unique service for which there is no alternative, transforms the airport, in my

opinion, from a simple transportation facility into one of the most important public assets in the southern Ontario and Canadian economy.

Terminal 3 will be privately leased and operated for a further 57 years. To contemplate the privatization of the remaining two Terminals of this public asset is, in my view, contrary to the public good. Only by ensuring that the redevelopment and operation of T1 and T2 are in the hands of a body with considerable responsiveness to the broadly defined public interest can the Government of Canada properly discharge its obligation to the region, the province and the country.

This agreement proposes to turn over this asset to T1 T2 Limited Partnership for 57 years. The length of this leasing arrangement is difficult to fathom. Capital repayment requirements will be met long before the term of the lease expires. Technological change suggests that inevitably transportation will be undertaken very differently 57 years from now. Compare today's transportation to that of 1935. With an asset as moved by technological change as an airport, the length of this obligation does not serve the public interest.

The revenue stream provided to the Government of Canada by this agreement is far from overwhelming. In the immediate term, the rentals received will in fact be less than in recent years. As the lease unfolds, the rental stream is highly dependent on aggressive pricing conducted essentially without government control and at the risk of making Pearson uncompetitive with competitor airports in Canada and the United States.

On the other hand, as I have been advised by my business valuation advisor the rate of return provided to T1 T2 Limited Partnership could, given the nature of this transaction, well be viewed as excessive.

Failure to make public the full identity of the participants in this agreement and other salient terms of the contract inevitably raises public suspicion. Where the government of Canada proposes to privatize a public asset, in my opinion, transparency should be the order of the day. The public should have the right to know the full details of the agreement.

The agreement contains a constraint on alternative airport development within a 75 km radius of Pearson. This may well constrain desirable policy initiatives on the part of the Government at southern Ontario airports that must, for planning purposes, all be considered part of a single system. Moreover, the constraint is relatively absolute until Pearson is processing 33 million passengers per year, guaranteeing no ability on the part of the Government of Canada to alleviate the pressures of growth until that point is reached. This is despite staff opinion recorded in the submission to Treasury Board that pressure for such alleviation would commence when the 30 million per year figure is reached. Not only will the limitation constrain possible desirable policy initiatives, but it may well ensure overcrowding at Pearson.

The agreement provides only modest constraint against self dealing on the part of the partners. The agreement provides no ability to modify non-arms length contracts in existence before October 7, 1993. For such contracts entered into after October 7, 1993, the Government of Canada has no prior veto right but only the right to complain after the fact.

The performance obligations on T1 T2 Limited Partnership are, perhaps necessarily, broadly phrased. The obligation to maintain and operate a first class air terminal is necessarily general. It will inevitably be difficult for the Government of Canada to determine when that obligation has been breached. Moreover, thereafter the main remedial avenues available to the Government of Canada are either to cancel the Ground Lease completely or operate the airport itself, both of which are draconian remedies which, in my view, are unlikely ever to be exercised.

Finally, this agreement presents very disadvantageous precedential value to the Government of Canada in dealing with local airport authorities that now operate a number of major airports across the country under conditions far more favourable to the Government of Canada than this agreement. It will in my view create a major pressure on the federal government to amend its relationships with those local airport authorities to give them as favourable treatment.

In summary, taking these matters together, it is my opinion that this agreement simply does not serve the public interest.

6. CONCLUSION

My review has left me with but one conclusion. To leave in place an inadequate contract, arrived at with such a flawed process and under the shadow of possible political manipulation, is unacceptable. I recommend to you that the contract be cancelled.

7. THE FUTURE

Although no formal cancellation clause was included in the agreement, I believe it reasonable, if you agree with my recommendation, for your representatives to approach the principals of T1 T2 Limited Partnership and inform them of your decision, to be implemented through negotiation or by referring the matter to Parliament. I am confident the former will result in a reasonable conclusion. The senior executives of T1 T2 Limited Partnership are responsible and professional business people.

In my view, it would be both necessary and indeed desirable to provide reasonable compensation. Let me suggest that this would include the expenditures incurred to date by T1 T2 Limited Partnership. It would not be necessary in my view for these negotiations to include compensation for lost opportunity or profits foregone. Given the circumstances of this unhappy transaction, and the very early stage of its life, there is no imperative for such compensation.

I further recommend that Transport Canada continue for the time being to administer Terminals 1 and 2, and proceed with necessary construction. Thereafter I recommend that Transport Canada recognize the Airport Authority. Once operational, the Airport Authority would receive from Transport Canada the responsibility of the day to day operations of the airport complex. It would also deal with the planning, financing and construction of airport infrastructure. In particular, this would include Terminals 1 and 2 and the runways, taxiways and aprons at Pearson.

Terminal 3 would remain in private hands.

The Airport Authority I am recommending is an expansion of the concept already in use in other communities. Because of the size and importance of Pearson to the Toronto region, the province of Ontario and Canada itself, it is my view that the provincial and federal governments should have direct representation on the Authority. The presently constituted Greater Toronto Region Airport Authority already represents business and the community at large of the five regions. The five present vacancies on the board of that Authority should be filled, in my view, by two members appointed by the Minister of Transportation Ontario, and three members including the Chairman appointed by the Minister of Transport Canada. These members should not be either elected officials or government employees and must perform their duties in the best interest of the Airport Authority.

Such an Authority provides in my view the necessary responsiveness to the broadly defined public interest that is required in the development and operation of Pearson. Moreover, as has been the experience at other Canadian airports, such an Authority would have reasonable access to capital independent of any government guarantee.

Extensive reviews indicate the need to coordinate the airport facilities in this area of south-central Ontario. The Authority should be authorized to negotiate the inclusion of these airport facilities into its mandate. By accepting the planning jurisdiction of this Authority, these facilities will benefit from capital and operating support available from the Authority to provide for the planning and improvement of the larger system.

Appendix E - Report by Robert Nixon

The T1 T2 complex is the heart of the Pearson Airport. The future operation and redevelopment of these Terminals must be done in the public interest. It is my recommendation to you that this cannot be done under the present agreement. In the future I trust it can be accomplished.

**PEARSON AIRPORT REVIEW
CONSULTED WITH OFFICIALS FROM THE
FOLLOWING ORGANIZATIONS:**

AIR CANADA
AIR TRANSAT
BRITISH AIRPORTS AUTHORITY
BUTTONVILLE AIRPORT
CANADA AIRPORTS LTD.
CANADA 3000
CITY OF MISSISSAUGA
CITY OF BRAMPTON
CITY OF HAMILTON
CITY OF TORONTO
CLARIDGE
COUNCIL OF CONCERNED RESIDENTS
DELTA AIRLINES
GOVERNMENT OF ONTARIO
GREATER TORONTO AREA REGIONAL CHAIRPERSONS
GREATER TORONTO REGIONAL AIRPORT AUTHORITY
METRO JOB START COALITION
MEMBERS OF PARLIAMENT FROM METRO TORONTO
MISSISSAUGA BOARD OF TRADE
MORRISON HERSHFIELD GROUP INC.
PAST TRANSPORT CANADA OFFICIALS
PAXPORT INC.
LEASTER B. PEARSON INTERNATIONAL AIRPORT
PEARSON DEVELOPMENT CORPORATION
FORMER SOUTH CENTRAL ONTARIO AIRPORT AUTHORITY
THE REGIONAL MUNICIPALITY OF HAMILTON-WENTWORTH
THE BOARD OF TRADE-METROPOLITAN TORONTO
TORONTO ISLAND AIRPORT
TRANSPORT CANADA

**Rapport du Comité spécial du Sénat sur
les accords de l'Aéroport Pearson**

Décembre 1995

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Sénat du Canada
Décembre 1995

This document is available in English

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Membres du Comité

Président : L'honorable Finlay MacDonald

Vice-président : L'honorable Michael Kirby

Les honorables sénateurs:

John Bryden

Céline Hervieux-Payette

Duncan Jessiman

Marjory LeBreton

David Tkachuk

* Joyce Fairbairn c.p. (ou Alasdair B. Graham)

* John Lynch-Staunton (ou Eric A. Berntson)

Dont la nomination a été approuvée en vertu d'une motion du Sénat:

Les honorables sénateurs :

Bryden, Fairbairn c.p. (ou Graham), Hervieux-Payette, Jessiman, Kirby, LeBreton, Lynch-Staunton (ou Berntson), MacDonald (Halifax), Tkachuk

Autres sénateurs ayant participé aux travaux du Comité :

Les honorables sénateurs :

Adams, Bosa, Carstairs, Doyle, Gigantés, Grafstein, Hébert, Kinsella, Losier-Cool, Poulin, Prud'homme, Robertson, Stewart, Sylvain.

* *Membres d'office*

Ordre de renvoi

Extrait des *Procès-verbaux du Sénat* du 4 mai 1995 :

Qu'un comité spécial du Sénat soit créé pour étudier tous les aspects inhérents aux politiques et aux négociations ayant mené aux accords relatifs au réaménagement et à l'exploitation des aéroports 1 et 2 de l'Aéroport international Lester B. Pearson, de même que les circonstances ayant entouré l'annulation des accords en question, ainsi qu'à faire rapport à ce sujet ;

Que sept sénateurs, dont trois constituent un quorum, soient nommés par le Comité de sélection au plus tard deux semaines après l'adoption de la présente motion pour faire partie de ce comité spécial ;

Que le comité ait le pouvoir de faire comparaître des personnes et produire des documents, d'entendre des témoins sous serment, de faire rapport de temps à autre et de faire imprimer au jour le jour documents et témoignages, selon les instructions du comité ;

Que le comité soit autorisé à siéger pendant les ajournements du Sénat ;

Que le comité soit autorisé à retenir les services des spécialistes et du personnel de soutien et autres qu'il juge nécessaire ;

Que le comité soit habilité à autoriser, s'il le juge opportun, la radiodiffusion et la télédiffusion de la totalité ou d'une partie de ses délibérations, et

Que le comité présente son rapport final au Sénat au plus tard un an après sa création.

La motion, telle que modifiée, mise aux voix, est adoptée.

Paul C. Bélisle
Greffier du Sénat

Les dépositions de ceux qui ont comparu devant nous témoignent mieux que le présent rapport ne pourra jamais le faire de la légitimité du processus, des avantages que comportait l'entente Pearson et de la tragédie que représente son annulation.

Rapport du Comité spécial du Sénat sur
les accords de l'Aéroport Pearson

La majorité des membres du Comité spécial chargé d'examiner les contrats de réaménagement de l'aéroport international Pearson en sont arrivés à la conclusion unanime que ces contrats avaient été conclus dans l'intérêt de la population canadienne et qu'ils n'auraient pas dû être résiliés par le premier ministre, M. Jean Chrétien. Ce rapport du Comité spécial du Sénat du Canada, le résultat d'une enquête sur les contrats de réaménagement et d'exploitation de deux des trois aérogares de l'Aéroport international Lester B. Pearson, explique comment des propos irréfléchis tenus pendant une campagne électorale fédérale ont été à l'origine d'un jugement précipité.

Ce jugement précipité était si imparfait qu'il pourrait coûter aux contribuables canadiens des millions de dollars. Il a entaché la réputation de gens d'affaires, de fonctionnaires et de politiciens. Il a fait perdre beaucoup d'argent à des particuliers et à des sociétés qui avaient conclu avec le gouvernement du Canada une entente juste et bonne qui servait l'intérêt de tous les Canadiens. Il a retardé le réaménagement indispensable d'un élément vital de l'infrastructure des transports au Canada, désavantageant le pays face à la concurrence dans les transports internationaux et compromettant ainsi les avantages économiques éventuels.

Pendant la campagne électorale de 1993, le chef de l'opposition M. Jean Chrétien a déclaré que s'il était élu, il ferait revoir l'entente de Pearson, et l'annulerait au besoin. Les insinuations et les exagérations dont il usait volontiers ont fini par imprégner toute la campagne. Sa position contrastait avec celle de son parti quand il était dans l'opposition, qui

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se désintéressait alors de la question du réaménagement ou l'appuyait en privé. Une fois élu, M. Chrétien a chargé M. Robert Nixon, ancien leader libéral en Ontario, d'examiner, dans un délai de trente jours, le projet de réaménagement. Le 29 novembre 1993, M. Nixon remettait au gouvernement son rapport, dans lequel il recommandait d'annuler les accords.

Il eût été préférable de mener une enquête judiciaire indépendante sur le projet de réaménagement de Pearson. Cependant, toutes les demandes d'un examen semblable sont restées lettre morte. L'examen de M. Nixon se résume à trois semaines d'entretiens, suivies d'une semaine consacrée à la rédaction du rapport. Le Comité spécial a appris que M. Nixon avait rencontré soixante-six personnes. C'est un chiffre qui ne laissait pas d'impressionner jusqu'à ce que l'on se rende compte que vingt-trois d'entre elles faisaient partie du caucus libéral du Grand Toronto. M. Nixon a tenu ses entretiens en privé. Le Comité n'a pu obtenir ni de lui ni de ses collaborateurs aucun détail sur ces entretiens, presque aucune note n'ayant été prise.

Le Comité spécial a entendu les témoignages de tous les principaux intervenants du secteur privé dans le projet de réaménagement et des hauts fonctionnaires qui représentaient le gouvernement. Seulement dix-huit des soixante-cinq personnes qui ont témoigné sous serment devant le Comité spécial avaient été interrogées par M. Nixon. Celui-ci a omis d'interroger bon nombre de figures clés du secteur public et du secteur privé. Selon des témoins, certains entretiens étaient si brefs qu'ils ne faisaient qu'effleurer la question ou ne portaient que sur un ou deux aspects des accords. Avec à l'esprit le rapport Nixon, des déclarations préjudiciables, indignes d'un ministre de la Couronne, et le projet de loi visant à empêcher les consortiums qui ont participé au projet Pearson d'intenter des poursuites pour récupérer leur manque à gagner, le Comité spécial a commencé ses audiences le 11 juillet dernier. Il s'est réuni à trente occasions.

Par définition, un comité parlementaire obéit à une discipline de parti. Cela se reflétera sans doute dans les conclusions différentes auxquelles en arriveront sénateurs libéraux et sénateurs conservateurs. Néanmoins, ce Comité spécial pourra se targuer d'avoir entendu pendant plus de cent trente heures les témoignages sous serment de soixante-cinq témoins, notamment les intervenants, tant du secteur public que du secteur privé, qui connaissent le mieux tous les enjeux, toutes les négociations et toutes les décisions concernant les accords Pearson. Les faits sont publics et abondamment détaillés.

L'enquête du Sénat du Canada sur les accords Pearson a permis de faire la lumière sur l'entente et a servi les objectifs de transparence et de responsabilité publique auxquels le gouvernement Chrétien ne s'attendait pas et dont il ne voulait pas. Malgré la difficulté d'accès aux documents et la non-divulgaration de certains documents ou parties de documents, nous sommes convaincus que les principaux éléments du dossier ont été soumis à l'examen public.

Les raisons du projet de réaménagement

L'aéroport Pearson, l'un des principaux aéroports internationaux au monde, est une plaque tournante vitale pour les vols intérieurs et pour nos deux grandes lignes aériennes. Plus de 800 appareils appartenant à une soixantaine de compagnies y font escale quotidiennement. Chaque jour, 57 000 passagers y transitent, soit plus du tiers du total canadien. Plus de 40 p. 100 de tout le fret aérien passe par Pearson. C'est un aéroport indispensable à notre compétitivité internationale. En effet, l'existence d'un aéroport de grande classe attirera industries, commerces et emplois à Toronto et au Canada. Avec des installations moins performantes, on verrait les investissements et les emplois s'envoler vers Cleveland, Pittsburg, Détroit ou Chicago.

Les différents gouvernements fédéraux se sont refusés à voir en Pearson le centre naturel du transport aérien national. Ils se sont refusés à cette évidence et, aux prises avec la politique régionale et un certain héritage politique, l'engagement de faire ce qu'il fallait pour que Pearson réalise son potentiel tant national qu'international n'a pas été pris avant 1989, lorsque le ministre des Transports a annoncé une stratégie de développement des aéroports dans le Sud de l'Ontario. Finalement, en 1989, la décision a été prise de faire de Pearson un aéroport international, le pivot, au Canada, du transport aérien national et international.

Les problèmes à l'aéroport Pearson étaient nombreux. Le trafic existant et projeté exigeait de nouvelles pistes. On manquait de contrôleurs aériens. L'espace de stationnement présentait un problème. Les aérogares 1 et 2, conçues pour recevoir 12 millions de passagers par année, en accueillaient 20 millions. Le nombre de portes à l'aérogare 2 était insuffisant, tandis que l'aérogare 1 était considérée comme un taudis, un cauchemar pour les voyageurs. Quelles que soient les décisions prises au sujet des pistes, il fallait immédiatement réaménager les aérogares.

Le gouvernement disposait de quatre options :

- 1) Procéder au réaménagement de la façon traditionnelle, c'est-à-dire injecter des fonds publics — solution difficile étant donné les contraintes économiques et financières du gouvernement fédéral.
- 2) Imposer des droits d'utilisation aux passagers — solution non seulement impopulaire mais probablement préjudiciable à la capacité concurrentielle de l'aéroport.

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- 3) Céder l'aéroport à une administration aéroportuaire locale — embourbé alors dans des querelles politiques, l'établissement de l'administration locale n'était tout simplement pas une solution de rechange réalisable.
- 4) Louer à bail les deux aérogares à des investisseurs privés qui les rénoveraient et les exploiteraient, tandis que le gouvernement fédéral conserverait son autorité sur la gestion de l'ensemble de l'aéroport.

La quatrième option était la plus susceptible de régler rapidement, sans dépenses d'investissement publiques, les problèmes pressants de Pearson, tout en permettant à l'État de conserver ses titres de propriété et son rôle de surveillance. De plus, il y avait un précédent avec l'aérogare 3 qui avait donné un bon résultat. En effet, le gouvernement avait accordé un bail foncier à un promoteur qui avait conçu, financé, construit et exploité, depuis 1991, l'aérogare 3 — une énorme entreprise, un ouvrage réalisé à coup de 580 millions en fonds privés. C'est à la lumière de cette expérience qu'a été élaboré le plan de travail pour les aérogares 1 et 2.

Pour ces raisons, le gouvernement a retenu l'option de louer à bail les aérogares 1 et 2 à des sociétés privées compétentes en imposant un échéancier strict pour leur réaménagement ainsi que des règles pour en garantir la gestion dans l'intérêt public.

Le processus

En mars 1992, le gouvernement était prêt à lancer la demande de propositions. Il avait fallu dix-huit mois pour mettre la demande au point, avec l'aide de consultants indépendants et à l'invitation du gouvernement — la contribution des parties intéressées. Les critères d'évaluation et le processus ont été établis. Des fonctionnaires du ministère des Transports, de la Justice et de l'Office national des transports ont été associés aux travaux. La société de placement indépendante Richardson Greenshields fournissait des conseils financiers. Price Waterhouse s'occupait de la sécurité du processus d'appel d'offres, en plus de contrôler l'application des critères d'évaluation et la méthodologie. Le groupe de vérification Raymond Chabot Martin & Paré observait le déroulement du processus pour garantir le respect des conditions établies. La firme Deloitte & Touche avait été engagée à titre de conseiller pour déterminer des taux de rendement justes pour le promoteur et le gouvernement.

Le Comité d'évaluation du gouvernement a consacré les mois de juillet et août 1992 à la comparaison des propositions de Paxport Inc. et du groupe Claridge. En octobre, il remettait son rapport au sous-ministre des Transports, qui devait être suivi, peu de temps après, de celui du groupe de vérification. C'est la proposition de Paxport qui a été jugée la

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meilleure proposition globale, ayant obtenu la plus haute note pour ce qui est des plans d'entreprise, de développement et d'exploitation.

En décembre 1992, le gouvernement annonçait que des négociations avec Paxport commenceraient en vue de la conclusion d'un accord pour réaménager et exploiter les aéroports 1 et 2. Peu de temps après, Paxport et Claridge décidaient de fonder une coentreprise, le T1T2 Limited Partnership, dont l'associé gérant était la Pearson Development Corporation (PDC). Cette fusion s'expliquait par l'existence de synergies entre les deux promoteurs, Claridge étant déjà propriétaire-exploitant de l'aéroport 3. Certes, Paxport présentait une proposition plus avantageuse pour l'État, mais sa fusion avec Claridge donnait au gouvernement une plus grande assurance financière.

Les négociations se sont amorcées dans les premiers mois de 1993 et, en juin, une lettre d'intention non exécutoire était signée par le sous-ministre des Transports, au nom du gouvernement, et par la Pearson Development Corporation. **Au début de juillet, le gouvernement et la Pearson Development Corporation s'étaient fermement engagés relativement au contrat de réaménagement, au point qu'ils décidaient de fixer au 7 octobre 1993 la date de signature de l'entente.** Le 27 août 1993, Après approbation par le Conseil du Trésor, le ministre des Transports était autorisé par décret à conclure, avec le T1T2 Limited Partnership, des accords de location et de développement. Nos informations confirment qu'avec cette autorisation, le gouvernement et la coentreprise étaient liés par des accords qui ne pouvaient être modifiés - et encore moins annulés - que par consentement mutuel. Autrement, la partie fautive aurait certainement été poursuivi pour dommages-intérêts.

À compter du 27 août et jusqu'au 7 octobre, la seule activité dans le dossier Pearson a été de nature bureaucratique. Il ne s'est produit aucun nouveau changement nécessitant l'approbation du Conseil du Trésor ni aucune action ou intervention ministérielle.

Dans un des documents remis au Conseil du Trésor, la firme Deloitte & Touche conclut que la valeur nette actualisée du bail foncier, soit de 800 à 900 millions de dollars, représentait une valeur marchande équitable pour l'État. Par ailleurs, le taux du rendement que devait réaliser le promoteur était jugé raisonnable.

Deux événements allaient toutefois se produire, qui devaient alimenter la controverse autour du projet de réaménagement.

Nouveaux facteurs

Tout d'abord, il y a eu une récession économique à l'échelle mondiale. Le trafic aérien, qui avait affiché une croissance rapide dans les années 80 et avait atteint un niveau record en 1991, a commencé à décliner. Dès 1992, l'aéroport international Pearson accusait un excédent de capacité. Le gouvernement s'est alors mis à entendre — surtout des opposants au projet de réaménagement des aérogares — qu'il fallait appliquer les freins, revoir le projet tout entier, et peut-être, faire faire quelques travaux à l'aéroport en attendant.

Le gouvernement était convaincu que le trafic redémarrerait une fois la récession terminée et dépasserait alors les niveaux records de 1991. Tout, et notamment les prévisions de Transports Canada et de l'Association du Transport aérien international, le laissait croire. Le gouvernement avait raison. Une fois la récession terminée, les volumes de trafic ont vite rattrapé les niveaux élevés de 1991. Malheureusement les installations aéroportuaires n'ont pas été modernisées lorsque les volumes de trafic étaient assez faibles pour le permettre. L'investisseur privé lui aussi comprenait la nature cyclique des affaires dans le secteur du transport aérien et était disposé à aller de l'avant. Le réaménagement devra maintenant se faire dans des conditions d'engagement. Même si les travaux commençaient aujourd'hui, il faudra encore au moins agir pour faire de Pearson un aéroport de niveau mondial.

Le deuxième fait marquant a été la formation d'un nouveau gouvernement sous la direction de la première ministre Kim Campbell. Le ministre des Transports qui occupait le poste sous l'administration précédente depuis 1991 a été reconduit dans ses fonctions par M^{me} Campbell. Le 8 septembre, la première ministre obtenait la dissolution du Parlement en vue d'une élection le 25 octobre 1993. Visant toujours la date limite du 7 octobre pour la conclusion de l'entente, les avocats des deux parties ont rédigé les documents juridiques définitifs au cours du mois de septembre. Ces principaux documents ont été signés par les parties les 3 et 4 octobre, puis mis en mains tierces jusqu'au 7 octobre, date fixée trois mois auparavant pour la signature de l'entente.

Durant la campagne électorale, les propos hautement partisans repris dans les médias ont soulevé l'opposition du public au contrat de réaménagement des aérogares, même si la transaction avait survécu à une procédure d'appel d'offres complexe et minutieuse.

L'émergence d'un enjeu électoral

Encouragés par des politiciens et des groupes d'intérêts, les médias se sont soudainement mis à faire des allégations de copinage et de favoritisme à propos de l'entente Pearson. On était assuré de faire la manchette. Étrangement toutefois, on a oublié de mentionner que Claridge, qui a fini par avoir les deux tiers des parts du T1T2 Ltd.

Partnership, entretenait de très solides liens avec la famille libérale. Le 5 octobre, M. Chrétien s'est servi du projet comme tremplin électoral, déclarant que, s'il devenait premier ministre, il reverrait ce contrat et, au besoin, l'annulerait. Le 7 octobre, on a demandé à la première ministre Campbell si elle voulait bien confirmer le déblocage des documents déjà signés de façon qu'on puisse aller de l'avant avec le réaménagement tant attendu.

Il n'y avait aucun doute quant au droit juridique et constitutionnel du gouvernement d'aller de l'avant avec ce projet. De plus, quelques semaines auparavant, certains des hauts fonctionnaires les plus importants de l'État avaient donné par écrit à la première ministre Campbell l'assurance que la sélection du promoteur avait été faite selon un processus concurrentiel «totalement transparent». De plus, dans une note à son intention et qui a été rendue publique depuis, ils lui garantissaient que les fonctionnaires, après avoir réexaminé le dossier, pouvaient confirmer la régularité des opérations à toutes les étapes. Enfin, un refus du gouvernement aurait eu des conséquences juridiques graves pour l'État. À la lumière de ces considérations, le gouvernement est allé de l'avant.

Des conclusions non fondées

Après l'élection, mais avant l'assermentation de ses ministres, M. Chrétien a commandé à M. Nixon une étude qui a été faite dans les délais et dont le résultat est un document qui, on le sait maintenant, fourmille d'insinuations et de fausses allégations.

Contrairement à l'avis donné au précédent gouvernement par des spécialistes indépendants, M. Nixon établit que la source de revenus pour le gouvernement était «loin d'être énorme» et que le taux de rendement accordé aux promoteurs «pourrait bien [...] être jugé excessif».

M. Nixon reproche à la première ministre Campbell d'avoir autorisé la signature de l'entente, qualifiant le contrat d'«inadéquat [...] conclu de façon si irrégulière et, possiblement, après manipulation politique». Il dit «soupçonner que le favoritisme [ne soit] pas étranger au choix de Paxport». Il maintient que l'activité des lobbyistes a dépassé «les limites permises», ajoutant que «le personnel politique a donné l'impression que cette transaction l'intéressait de manière fort peu commune». Aucun fait, aucun document n'est fourni par M. Nixon pour appuyer ces allégations. Néanmoins, M. Nixon recommande l'annulation des contrats, ce que M. Chrétien annonce le 3 décembre, soit quatre jours après avoir reçu le rapport. Nous avons du mal à comprendre pourquoi on n'a pas avoir examiné sérieusement d'autres options, comme la renégociation des accords, ce qui aurait été beaucoup moins coûteux pour la population canadienne que la situation dans laquelle nous nous trouvons par suite de l'annulation.

Avant-propos du président

Depuis 1993, des allégations et des insinuations de manipulation de soumissions, de favoritisme, d'ingérence politique et de lobbyisme excessif devaient finir par ternir la réputation d'anciens premiers ministres et ministres, de politiciens, de fonctionnaires, de lobbyistes et d'entrepreneurs ayant participé au processus Pearson. Qui devait-on blâmer d'avoir dénaturé les faits à ce point? Le seul rapport du gouvernement sur la question est le rapport de M. Nixon, qui regorge d'allégations non fondées.

Des conclusions basées sur les faits

Après avoir entendu tous les témoignages, le Comité en est venu majoritairement à quatre conclusions :

1) La décision gouvernementale d'aller de l'avant était judicieuse

Il est toujours possible de contester les décisions du gouvernement. Cependant, les preuves obtenues laissent au Comité peu de doute que, vu l'urgent besoin de réaménager l'aéroport Pearson et le peu d'options dont disposait le gouvernement, la décision de louer les aérogares 1 et 2 à des promoteurs très expérimentés et hautement compétents était judicieuse.

2) Le processus était équitable et impartial

D'après le témoignage sans équivoque de vingt-six fonctionnaires, dont des anciens, et de tous les conseillers professionnels embauchés par le gouvernement, le processus était au-dessus de tout soupçon. La preuve est faite — et de façon convaincante — qu'il n'y a pas eu d'ingérence politique et que l'influence des lobbyistes était négligeable.

3) Les contrats étaient avantageux pour le contribuable canadien

Les avantages des accords Pearson pour la population canadienne étaient considérables. Cela représentait un investissement immédiat de 96 millions de dollars suivi de 647 millions de dollars, par étapes, au cours du projet, et ce, sans qu'il en coûte un sou au contribuable. En outre, le gouvernement aurait reçu plusieurs millions en paiements de location. Des milliers d'emplois, directs ou indirects, auraient été créés et on aurait assisté à l'entrée en scène d'un participant canadien mondialement reconnu dans l'aménagement et l'exploitation aéroportuaire. Le taux de rendement des promoteurs était tout à fait raisonnable pour ce type d'entreprise. Les fonctionnaires qui avaient travaillé pendant de nombreuses années pour trouver une solution acceptable au «bourbier» de l'aéroport Pearson avaient toutes les raisons du monde d'être fiers des résultats obtenus.

4) Enjeux électoraux ou intérêt public

Les décideurs politiques, de quelque parti qu'ils soient, devraient tirer de l'expérience Pearson une leçon essentielle: les passions engendrées par les campagnes électorales sont de très mauvaises conseillères face aux complexités de l'élaboration de décisions politiques avisées. Par ailleurs, lorsqu'on s'engage à revoir les grandes décisions d'intérêt public prises par un gouvernement précédent, il faut le faire loin des émotions partisans qui peuvent avoir précipité les choses.

Dernières réflexions

La nécessité d'une enquête sur l'annulation des accords Pearson s'est trouvée renforcée par les sérieuses accusations faites depuis deux ans par le ministre des Transports, M. Douglas Young. Ses insinuations malicieuses, qui visent presque tous ceux qui ont été associés aux accords, notamment d'anciens premiers ministres et ministres, des personnalités politiques, des hauts fonctionnaires, des promoteurs et des lobbyistes, réclamaient une enquête.

Les allégations du Ministre étaient fondées sur un rapport qui, nous l'avons démontré de façon convaincante par notre enquête, était cousu d'insinuations, de oui-dire et de soupçons gratuits. Et pourtant, ces allégations ont nui considérablement à la réputation de Canadiens innocents. Nous espérons que notre rapport constituera pour ces personnes une sorte de disculpation, nous permettant ainsi de ne pas négliger le côté humain de cette annulation tout en traitant de ses implications désastreuses pour l'intérêt public.

Notre enquête a été longue et exténuante. De temps à autre, nous n'avons pu dissimuler notre frustration devant la difficulté d'obtenir des dossiers et le refus de fournir certains documents ou parties de documents sous le couvert de la *Loi sur l'accès à l'information*. Tout compte fait, nous sommes convaincus que les principaux éléments du dossier ont été rassemblés et soumis à l'examen public. Ce dossier, ainsi que les dépositions de ceux qui ont comparu devant nous, témoignent mieux que le présent rapport ne pourra jamais le faire de la légitimité du processus, des avantages que comportait l'entente Pearson et de la tragédie que représente son annulation.

Le président,

Finlay MacDonald

Introduction

Ma mission première était non pas de conclure une entente à n'importe quel prix, mais de négocier un accord satisfaisant, faute de quoi, il faudrait y renoncer.

David Broadbent
Négociateur du gouvernement.

Le 4 mai 1995, le Sénat du Canada a chargé un comité spécial de mener une vaste enquête sur les origines, la teneur et l'annulation des accords conclus en octobre 1993 entre le gouvernement du Canada et la Pearson Development Corporation concernant le réaménagement et l'exploitation des aéroports 1 et 2 de l'Aéroport international Lester B. Pearson.

Le rapport qui suit présente les constatations et conclusions auxquelles sont arrivés la majorité des membres du Comité en se fondant sur les dépositions d'une bonne soixantaine de personnes, dont celles qui ont joué un rôle important dans la décision de réaménager les aéroports et dans l'élaboration des accords. Nos audiences ont commencé à la mi-juillet et se sont poursuivies intensivement jusqu'au début de novembre 1995. Nous avons entendu les deux ministres des Transports responsables des principales décisions prises durant l'élaboration de l'entente, de nombreux fonctionnaires intéressés (notamment les cadres supérieurs), les représentants des promoteurs, des lobbyistes et des universitaires.

Les délibérations se sont terminées par une longue série de rencontres avec M. Robert Nixon, sur le rapport duquel s'est fondé l'actuel gouvernement pour annuler les accords, avec son conseiller juridique, M. Stephen Goudge, et avec son conseiller financier, M. Allen Crosbie.

Nous désirons exprimer notre profonde reconnaissance envers tous ceux qui ont participé à nos travaux, dans bien des cas en modifiant pour ce faire leurs projets de vacances. Nous adressons des remerciements spéciaux aux fonctionnaires fédéraux qui ont comparu, car nous reconnaissons que notre enquête a pu mettre les cadres supérieurs, surtout, dans une position délicate. En effet, après avoir parfois été obligés de fournir des preuves réfutant la plupart des justifications données par l'actuel gouvernement pour l'annulation des ententes, ils doivent continuer de travailler directement sous les ordres de ce gouvernement et conserver sa confiance. Nous louons le professionnalisme avisé dont ils ont fait montre

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dans leurs analyses et leurs avis et qui prouve leur capacité de servir les gouvernements de toutes allégeances politiques.

Nous tenons également à souligner la précieuse collaboration de la Direction des comités du Sénat, de nos conseillers juridiques et de notre propre personnel. Enfin, nous voulons remercier les agents de recherche de la Bibliothèque du Parlement, qui ont notamment fourni une aide inestimable pour la rédaction du rapport.

S'en tenir aux faits

D'une façon générale, nous avons dû relever, au cours de notre enquête, deux grands défis. Le premier, sans doute évident pour ceux qui ont assisté à la télédiffusion quotidienne de nos délibérations, consistait à dégager les faits d'un processus extrêmement complexe, amorcé il y a plus de cinq ans. Le second, tout aussi fondamental pour notre mission, consistait à définir des critères raisonnables qui permettraient d'évaluer ces faits.

Dès le début, nous avons été confrontés à la difficulté de distinguer la réalité de la rumeur, du oui-dire, du soupçon injustifié et de ce qui, à notre avis, constitue un certain degré d'opportunisme politique. Cette tâche comportait plusieurs dimensions.

Premièrement, il a fallu examiner quelque 45 000 pages de notes d'information, de notes de service, de notes pour mémoire et d'autres documents de la fonction publique, ainsi que des pièces semblables produites par les promoteurs et les différents témoins. Nous nous sommes efforcés de ne pas attribuer de funestes significations à des mots utilisés de façon inconsidérée ou fortuite dans des projets qui, par ailleurs, ont peut-être été réécrits après une utilisation strictement interne. Par exemple, le mot «pression», qui revient régulièrement dans les documents distribués par les fonctionnaires, recouvre une notion toute simple : les projets sont assortis de délais et, de temps à autre, les délais exercent une certaine pression sur les gens. À ce qu'on a pu déterminer, c'est cette réalité qui a alimenté les rumeurs voulant qu'une «pression politique intense» ait plané sur les accords Pearson dès le jour de leur signature.

Nous avons deuxièmement dû composer avec les mesures prises par le gouvernement pour garantir que les documents confidentiels du Cabinet, les avis aux ministres, les communications avocat-client et autres renseignements protégés ne se retrouvent dans aucun des documents produits pour notre enquête. Cette situation a soulevé un certain nombre de problèmes récurrents qui, selon nous, ont de graves répercussions sur l'efficacité des comités parlementaires. La partie III du rapport contient une description détaillée de notre expérience à cet égard, des problèmes qui se sont posés et des solutions que nous proposons.

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L'impossibilité d'obtenir certains documents gouvernementaux a été pour nous particulièrement frustrante. Mentionnons entre autres choses une présentation au Conseil du Trésor censée contenir des commentaires critiques à l'égard des accords Pearson et qui a été soit divulguée soit transmise par inadvertance à M. Nixon et à au moins un journaliste. Pour des raisons que nous énonçons plus bas, cependant, nous considérons que l'absence de ce document ne nous a pas privés des données dont nous avons besoin pour en arriver à des conclusions fiables. En fait, nous avons pris la précaution de convoquer de nouveau plusieurs fonctionnaires, le 23 octobre 1995, et avons à cette occasion abordé les problèmes liés à la dite présentation, ce qui a donné lieu à des réfutations détaillées et, à notre avis, concluantes. Toutefois, les difficultés d'accès à de tels documents menacent la crédibilité des comités parlementaires, surtout ceux qui examinent des questions fondées sur des soupçons et des suppositions directement attribuables à l'absence de données complètes.

Une troisième difficulté tenait à la nature même du Comité. Constitué selon les règles applicables aux comités sénatoriaux, notre groupe se composait d'une majorité de membres du Parti progressiste conservateur et d'une minorité de Libéraux; or, les convictions divergentes de la majorité et de la minorité concernant les accords Pearson sont ressorties presque immédiatement. Il nous incombait donc de trouver des moyens de travailler ensemble d'une façon efficace, malgré de profonds désaccords, et tous les membres peuvent se féliciter du succès du Comité à cet égard. Durant les délibérations, les deux camps ont procédé un peu comme la poursuite et la défense dans une procédure judiciaire. Chacun ayant posé aux divers témoins des questions complémentaires, nous croyons que les preuves accumulées sont plus complètes que si l'interrogation était venue d'une seule source.

Le défi des critères raisonnables

Notre tâche consistait également à établir des critères raisonnables pour évaluer les accords Pearson et le processus ayant mené à ces accords. À notre avis (ce que nous expliquons en détail dans le chapitre VI), la décision d'annuler les accords a irrémédiablement souffert de l'absence de tels critères.

Les critères raisonnables pour l'examen de l'entente Pearson doivent au premier chef pouvoir s'appliquer d'une façon générale à d'autres accords semblables ainsi qu'aux processus gouvernementaux correspondants. Il ne serait pas raisonnable, par exemple, de rejeter les accords Pearson à cause de l'omniprésence des lobbyistes à moins qu'il n'y ait preuve de méfaits ou d'une influence illicite. Les dossiers contenus dans le registre fédéral des lobbyistes montrent que l'activité de ces derniers est directement proportionnelle à la taille des projets. Or, pour un projet de l'importance de l'affaire Pearson, le niveau d'activité était normal.

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Il serait déraisonnable de rejeter les accords Pearson simplement en raison de liens de connaissance, d'amitié ou d'allégeance politique entre promoteurs ou décideurs politiques et publics. Le fait que les décideurs se connaissent et fréquentent le même club de golf ne constitue pas une force menaçante qui risquerait de miner notre système politique.

Enfin, il ne serait pas raisonnable de rejeter les accords Pearson parce que quelques-uns des nombreux fonctionnaires qui ont travaillé à leur élaboration critiquaient ou désapprouvaient les décisions du gouvernement, ou ont senti une certaine pression dans l'exécution de leur travail. Il s'agit là de réactions normales montrant bien que les gens peuvent, en toute bonne foi, avoir des opinions différentes sur des questions d'intérêt public et que les fonctionnaires, comme les employés d'autres organisations, peuvent être réfractaires au changement.

Durant toute l'enquête, nous avons appliqué — de façon constante, croyons-nous, — quatre critères d'évaluation des accords Pearson et de tout le processus correspondant. À notre avis, il s'agit de critères généralement acceptés par ceux qui ont participé au processus et conformes aux normes traditionnelles de la vie publique au Canada. Il s'agit également de critères auxquels l'actuel gouvernement continue d'adhérer, sauf pour le cas des accords Pearson.

Le premier de ces critères, le plus important, est d'ordre éthique : en ce qui concerne les aéroports de l'aéroport Pearson et leur réaménagement, y a-t-il un fonctionnaire qui a sciemment rejeté ce qu'il estimait être l'intérêt public en faveur d'un intérêt privé, à un moment quelconque du processus ou avant sa mise en oeuvre? Si l'on réussit à prouver un manquement à l'éthique dans les accords Pearson, alors non seulement il faut le corriger mais il faut également punir les responsables des conséquences. Par contre, en l'absence de preuves à cet égard, c'est une injustice que de punir les intervenants, injustice qu'il y aurait lieu de corriger.

Le deuxième critère a trait à l'intégrité du processus et la question essentielle à poser est la suivante: est-ce que des pressions politiques, des contraintes de temps ou d'autres conditions ont empêché les gens de faire un bon travail ou d'appliquer le processus décisionnel et d'autres contrôles rattachés à la notion du respect des règles dans la fonction publique? Si l'on constate des lacunes dans l'intégrité du processus, la mesure à prendre dépend de la nature précise de celle-ci. Par exemple, une tentative délibérée pour empêcher les gens de faire leur travail peut exiger une punition semblable à celle que commande le manque d'éthique, en plus des mesures à prendre pour corriger la situation. Un manquement involontaire à une obligation, par ailleurs, comme le fait d'essayer d'effectuer un travail sans les ressources humaines et matérielles suffisantes, demanderait que l'on répare les dommages, soit par l'annulation de l'entente ou par la renégociation des points qui laissent à désirer. Si aucune lacune n'est décelée à ce niveau, on pourrait encore critiquer les accords

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Pearson sous d'autres rapports, mais il faut abandonner l'idée que le processus ait pu, d'une certaine façon, être faussé.

Le troisième critère concerne l'intérêt public. Il faut reconnaître que les gens peuvent, de bonne foi, ne pas être d'accord sur ce qu'exige l'intérêt public dans une situation donnée. Un nouveau gouvernement a le droit de revoir les décisions de ses prédécesseurs et de les modifier si elles sont fondamentalement contraires à l'idée qu'il se fait de l'intérêt public.

Par ailleurs, un examen pourrait aboutir à la conclusion que le principe fondamental des accords est acceptable. Dans le cas de l'entente Pearson, il faudrait alors entériner les partenariats entre les secteurs public et privé par lesquels des consortiums ont obtenu la location à long terme d'aéroports en vue de les moderniser et de les exploiter, le gouvernement conservant la responsabilité de certaines questions d'intérêt public comme la sécurité. L'examen des accords Pearson sous l'aspect de l'intérêt public exige une étude structurée des dispositions des accords et des problèmes qu'ils tentaient de régler, sans que l'attention ne soit subrepticement ramenée à des présomptions concernant les intervenants ou le processus. Un examen honnête doit également comparer les dommages causés par les lacunes constatées aux coûts de leur réparation. Selon la conclusion d'une telle étude, on aurait pu recommander soit d'annuler les accords, soit de les renégocier, soit encore de les maintenir tels que conclus en 1993.

Le quatrième et dernier critère, qui porte sur des détails, soulève la question suivante : est-il raisonnable de penser pouvoir améliorer sensiblement l'un ou l'autre des éléments ou dispositions des accords Pearson? Pour faire un travail sérieux à ce stade, on ne peut se contenter d'examiner certains aspects de l'entente en vue d'une renégociation. Il faut absolument tenir compte du fait que les accords Pearson découlent d'un compromis complexe sur de nombreuses questions où la position de l'État et celle des promoteurs différaient. Si on constate des lacunes, la chose logique à faire serait d'entamer des pourparlers avec les promoteurs, afin d'établir la probabilité de gains supplémentaires sur des points précis, ou alors de procéder à un réarrangement du compromis. À cet égard, il est peu probable que la conclusion de l'enquête mène à l'annulation globale des accords. Elle contribuerait plutôt à mettre en lumière les points à renégocier ou donnerait lieu à la recommandation de conserver les accords existants.

Choisir de ne pas appliquer des critères raisonnables à l'examen des accords Pearson, équivaldrait à s'en remettre à des critères arbitraires, à des convictions personnelles, à des états d'âme, ou aux trois à la fois.

Nous croyons que, dans le cas des accords Pearson, c'est ce qui s'est produit chez nous. Toutefois, dans notre conscience politique, les normes propres à une société

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démocratique sont intactes, à savoir la primauté de la loi et le respect des droits individuels. Ces mêmes normes permettent d'amorcer une évaluation raisonnable des accords Pearson. Et ce sont elles qui jouent dans la façon de procéder du gouvernement face à cette question.

Notre rapport

Le présent rapport constitue notre contribution à la solution des problèmes créés par l'annulation des accords Pearson. Il contient des recommandations fondées sur l'examen détaillé du processus et des décisions de principe à l'origine des accords, ainsi que sur une étude poussée des raisons qui ont entraîné leur annulation.

Le chapitre I, intitulé «Le cadre stratégique», examine la question de l'intérêt public relativement aux accords Pearson. Il y est surtout question de la politique du gouvernement en matière de gestion des aéroports diffusée en 1987 et révisée en 1989 et 1990, et dont l'objectif premier était de créer des administrations locales pour gérer les grands aéroports et d'accroître l'adaptabilité des aéroports aux forces du marché. Le chapitre traite également de la décision prise en 1989 d'aménager l'aéroport Pearson à sa capacité maximale, ainsi que du recours aux partenariats entre les secteurs public et privé, à compter de 1986, qui a mené à la construction de l'aérogare 3.

Dans le chapitre II, «La décision de réaménager les aérogares 1 et 2», on approfondit la décision de procéder à la modernisation des aérogares 1 et 2 par voie de concours, les promoteurs du secteur privé étant invités à proposer des solutions novatrices. La décision, annoncée le 17 octobre 1990, est née du besoin de réaménager les aérogares à l'aéroport Pearson, besoin jugé urgent vers la fin des années 80, et aussi de l'objectif politique dont il est question au chapitre I.

Le chapitre III, «La préparation de la demande de propositions», fait état des diverses décisions entourant la conception de la demande de propositions. Cette dernière, publiée le 16 mars 1992, informait les promoteurs des objectifs du gouvernement à l'égard du projet et de ses exigences précises, tout en les renseignant sur les normes qui seraient utilisées pour évaluer les propositions et sur le délai à respecter pour les présenter.

Le chapitre IV, qui s'intitule «La sélection de la meilleure proposition», couvre la période entre le lancement de la demande de propositions et le 7 décembre 1992, date à laquelle le gouvernement a annoncé le résultat de l'évaluation des propositions. Dans ce laps de temps, le Ministère a reçu des propositions de trois consortiums : Paxport, dirigé par le groupe Matthews, l'Airport Terminals Development Group (ATDG), contrôlé par les intérêts Bronfman, et Morrison Hershfield, lequel n'a pas été pris en considération parce qu'il n'a pas satisfait aux exigences de dépôt et autres dispositions de la demande de propositions. Les propositions admises ont été évaluées au moyen d'un processus très structuré comportant

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L'application des critères énoncés dans la demande de propositions. L'évaluation a montré que la proposition de Paxport et celle de l'ATDG étaient toutes deux acceptables, mais que la première était supérieure dans quatre des six catégories notées, ce qui en faisait la meilleure proposition globale. La recommandation dans ce sens ayant été acceptée par le ministre et par le Cabinet, la décision a été annoncée le 7 décembre 1992.

Le chapitre V, intitulé «La négociation des accords», porte sur la période allant du 7 décembre 1992, date de l'annonce de la meilleure proposition globale, à la conclusion de l'entente sur le réaménagement des aéroports, qui a eu lieu à la date limite prévue, le 7 octobre 1993. Durant la première phase de cette période, en sa qualité de meilleur proposant, Paxport a eu une première occasion de tenter de convaincre le gouvernement que tout était prêt pour le début des négociations officielles. Les discussions concernant une série de problèmes mis en lumière durant l'évaluation ont cependant cessé lorsque Paxport et l'ATDG ont créé une coentreprise qui, de son côté, a pu démontrer au gouvernement sa capacité d'obtenir le financement nécessaire à la réalisation des travaux décrits dans la meilleure proposition globale. C'est durant la deuxième phase de la période que se sont négociées les conditions détaillées des divers accords compris dans l'entente entre le gouvernement et la Pearson Development Corporation, l'entreprise conjointe créée par Paxport et l'ATDG. Enfin, au cours de la troisième phase, soit à l'automne de 1993, on mettait la dernière main aux contrats établissant les conditions juridiques des accords et, le 7 octobre, l'entente était conclue.

Dans le chapitre VI, «L'annulation», il est question de la nomination de M. Robert Nixon, à la suite des élections du 25 octobre, qui a été chargé de revoir l'entente Pearson. Après avoir établi les circonstances de sa nomination, nous passons en revue le processus d'examen et la méthodologie qui semble avoir été appliquée entre le 27 octobre 1993, date à laquelle le premier ministre a demandé l'aide de M. Nixon, et le 29 novembre 1993, date de présentation de ses constatations et recommandations. C'est à ces dernières que nous nous arrêtons ensuite, les examinant par rapport aux conclusions de notre propre enquête, dont nous avons fait état dans les chapitres précédents. Sous cet éclairage, nous évaluons la décision annoncée par le premier ministre le 3 décembre 1993 d'annuler les accords Pearson.

Notre dernier chapitre «Constatations, conclusions et recommandations», donne un bref aperçu de nos principales constatations et des cinq grandes conclusions qui se dégagent de notre enquête. On y trouve également les recommandations clés que ces constatations rendent, à notre avis, nécessaires.

Nous avons joint plusieurs annexes au rapport, en plus des détails sur les audiences et autres renseignements qu'on y trouve normalement.

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Dans l'une d'elles, le président et le vice-président examinent longuement les questions d'accès à l'information du gouvernement qui ont fait surface tout au long de l'enquête, et formulent à ce propos certaines recommandations. Le pouvoir d'exiger la comparution de personnes ou la production de documents et de dossiers est essentiel à la capacité du Parlement de tenir le gouvernement comptable de ses actions. Les auteurs croient ainsi que notre expérience dans le cadre de cette enquête soulève des questions fondamentales liées au principe démocratique.

Étant donné la complexité du processus et le nombre d'intervenants dans l'élaboration des accords Pearson, nous avons également ajouté deux annexes de référence. L'annexe B donne la chronologie des événements, tandis que l'annexe C fournit la liste des participants qui ont joué un rôle important dans le processus. Nous espérons que ces ajouts, en plus d'aider le lecteur, accroîtront l'utilité du rapport comme ouvrage de référence.

Enfin, pour la commodité du lecteur, nous avons joint le rapport Nixon (voir Annexe E).

L'idée était que le gouvernement continuerait de posséder les terres, mais étudierait attentivement toute proposition favorable concernant le transfert de propriété à une organisation publique ou le transfert de la responsabilité d'exploitation par l'entremise d'un bail à une entreprise privée.

Austin Douglas
Transports Canada

A en juger par les témoignages des hauts fonctionnaires relativement aux premières étapes du processus menant aux accords Pearson, on chercherait en vain une politique unique qui contiendrait la totalité des règles et directives concernant la modernisation d'aéroports : il n'en existe pas. Il faut donc étudier les accords Pearson dans le contexte d'une kyrielle de politiques portant essentiellement sur d'autres questions et qui, avec la décision, prise antérieurement, de confier la construction et l'exploitation de l'aéroport 3 à un promoteur privé, ont orienté les décisions relatives à la modernisation des aéroports 1 et 2.

1. Orientations nouvelles à l'échelle de l'administration publique

Le gouvernement progressiste conservateur, fidèle à la position qu'il avait prise dès les élections de 1984, souhaitait que l'administration fonctionne davantage à la façon du secteur privé tant pour améliorer la capacité de réaction et réaliser des gains d'efficacité que pour rationaliser les opérations en vue d'aider à réduire le déficit. Sur le plan de la politique générale des transports, ce souhait était reflété dans l'exposé de principe intitulé *Aller sans entraves*, où il était démontré que le carcan de la réglementation élaborée au fil des ans était en train de compromettre l'efficacité des transports canadiens et leur compétitivité au niveau mondial et que le gouvernement devait moins réglementer dans les moindres détails et jouer davantage un rôle de facilitateur¹.

Selon un responsable du ministère des Transports, le thème de l'orientation commerciale a été interprété au Ministère comme signifiant qu'il fallait chercher à maximiser la participation du secteur privé à toutes sortes d'activités qu'il avait assumées seul jusque-là. S'agissant des aéroports, cela voulait dire qu'on allait envisager d'élargir le champ d'action

¹ Transports Canada, *Aller sans entraves*, juillet 1985, avant-propos, p. 2.

habituel du secteur privé, qui se bornait jusque-là aux travaux de conception et de construction, pour englober le financement et l'exploitation.

Une tendance connexe – la privatisation des sociétés d'État – a commencé à se dégager en 1986 avec la mise sur pied d'un comité du Cabinet sur la privatisation, présidé par la ministre d'État à la Privatisation, M^{me} Barbara McDougall, et la création du Bureau de privatisation et des affaires réglementaires, chargé des activités de soutien et de coordination. On voulait que le gouvernement se dégage des activités qui n'étaient plus considérées comme nécessaires à la réalisation des objectifs de la politique publique, et favoriser une efficience et une efficacité plus grandes dans les entreprises en les exposant davantage aux forces du marché.

Selon M. Victor Barbeau, qui était à l'époque sous-ministre adjoint des Transports responsable des aéroports, la politique de privatisation n'est pas entrée directement en ligne de compte dans les décisions relatives à la modernisation des aéroports². Elle donne cependant une idée de l'orientation générale de l'action gouvernementale, laquelle se reflète en partie dans les politiques sur les aéroports élaborées vers la fin des années 80. De même, l'importance nouvelle accordée à l'orientation commerciale et à la performance allait trouver un écho dans les directives s'appliquant expressément aux aéroports.

2. Administrations aéroportuaires locales

A) Le groupe de travail Mazankowski

La genèse de la politique de dévolution de la gestion globale des grands aéroports à des administrations locales remonte au lendemain des élections générales de 1984. Pour donner suite aux engagements contenus dans le Budget de mai 1985 et à l'insatisfaction des provinces de l'Ouest au sujet de la gestion publique centralisée des aéroports, le ministre des Transports de l'époque, Donald Mazankowski, instituait en octobre 1985 un groupe de travail composé de représentants du public, de l'industrie du transport aérien et du gouvernement pour étudier des solutions de rechange quant au rôle futur du gouvernement sur le plan du financement, de la gestion et de l'exploitation des aéroports³.

² *Délibérations du Comité spécial du Sénat sur les accords de l'aéroport Pearson*, fascicule n° 2, page 37. Dorénavant, les références aux délibérations s'écritont ainsi : 2:37.

³ Transports Canada, *L'avenir de la gestion des aéroports canadiens*, rapport du Groupe de travail sur les aéroports, 1986, p. 2.

Dans son rapport de 1986, le Groupe de travail a constaté que le réseau d'aéroports canadien offrait certes un service efficace, mais qu'il était aux prises avec trois gros problèmes : des déficits importants et croissants, une adaptation insuffisante aux besoins locaux et régionaux, et enfin, un manque d'efficacité imputable à la forte présence des pouvoirs publics. Pour remédier à ces problèmes, le Groupe de travail a envisagé quatre solutions quant à la propriété des aéroports : privatiser les aéroports, en faire des sociétés d'État, les confier à des administrations aéroportuaires locales ou en faire des entreprises publiques à vocation commerciale relevant de Transports Canada.

Le Groupe de travail a opté pour les administrations aéroportuaires, la solution des sociétés d'État venant au deuxième rang. La privatisation des aéroports a été écartée pour plusieurs raisons : on craignait un manque de prise en compte des diverses clientèles; il n'y avait pas suffisamment de garanties d'une plus grande adaptation à la clientèle; les subventions gouvernementales risquaient de prêter le flanc à la critique; il serait difficile de se servir des aéroports rentables pour subventionner ceux qui ne le sont pas; enfin, il serait malaisé d'appliquer certaines politiques fédérales, comme la réduction des coûts et le bilinguisme⁴.

B) La politique de 1987

Les recommandations du Groupe de travail ont servi de fondement à la politique de 1987 relative aux administrations aéroportuaires locales, dont le ministre de l'époque, M. Douglas Lewis, a dit que «c'est sur elle que repose vraiment l'approche du gouvernement pour ce qui touche la gestion des aéroports»⁵.

Cette politique, intitulée «Une nouvelle politique relative au futur cadre de gestion des aéroports canadiens» et datée du 8 avril 1987, incorpore les deux grands principes du transfert des responsabilités quant à la gestion des grands aéroports et de l'accentuation de l'orientation commerciale du mode de gestion des aéroports dépendant de Transports Canada.

La politique de transfert des responsabilités prévoyait que le ministère des Transports conserverait ses attributions en matière de sûreté et de sécurité, mais envisagerait de céder à des organismes intéressés la propriété ou l'exploitation des aéroports, ou les deux. La politique est assez souple en ce qui concerne les organismes en question; il peut s'agir de

⁴ Voir *Délibérations*, 2:29 et 2:71.

⁵ Voir *Délibérations*, 4:5.

Chapitre I - Le cadre stratégique

provinces, de municipalités, d'administrations locales ou de commissions agréées par une loi fédérale ou provinciale. «La location à bail au secteur privé serait aussi envisagée»⁶.

La politique expose par ailleurs un certain nombre de considérations pour orienter les décisions prises en réponse à des déclarations d'intérêt : pas d'augmentation du financement public à long terme, indemnisation raisonnable pour les installations cédées, négociation d'arrangements satisfaisants visant notamment le transfert des employés, respect des baux ou contrats existants, et respect des programmes fédéraux comme celui des langues officielles.

Le second volet de la politique concerne l'orientation commerciale des aéroports qui continueraient de relever de Transports Canada et établit une série d'objectifs à cet égard, dont plusieurs renvoient à la nécessité d'administrer les opérations davantage comme le ferait le secteur privé et de maximiser les recettes. Il y est également fait mention de plans de développement commercial et de l'établissement prévu d'un conseil consultatif dans chaque grand aéroport en vue d'en axer davantage la gestion sur le modèle commercial et de mieux répondre aux besoins locaux. Enfin, il est indiqué que «toutes les occasions de participation du secteur privé aux services aéroportuaires tant traditionnels qu'innovateurs seraient continuellement explorées et favorisées dans toute la mesure du possible»⁷.

La politique de 1987 reflète le penchant du groupe de travail Mazankowski pour le transfert des responsabilités. La différence consiste dans le fait que les solutions à cet égard sont présentées sans ordre (et comprennent la location à bail des aéroports à des entreprises privées) alors que, dans les recommandations du Groupe de travail, les mesures proposées étaient classées en ordre de préférence et excluaient la cession de la propriété des aéroports au secteur privé. Par ailleurs, la politique de 1987 va au-delà de la question de la gestion intégrale des aéroports et envisage la participation accrue du secteur privé à certains aspects de la gestion des aéroports qui continueraient de relever de Transports Canada.

On ne nous a pas fourni de raisons précises pour lesquelles la politique de 1987 diffère à certains égards des recommandations précédemment formulées par le Groupe de travail. Les fonctionnaires interrogés à ce sujet se sont contentés de dire qu'on avait dans l'intervalle examiné d'autres façons de concrétiser l'idée des administrations aéroportuaires locales⁸.

⁶ L'avenir de la gestion des aéroports canadiens, *op. cit.*, p. 1.

⁷ *Ibid.*, p. 4.

⁸ Voir *Délibérations*, 2:29-30.

C) Évolution de la politique

Les porte-parole du Ministère nous ont dit que l'idée des administrations aéroportuaires locales était considérée comme tout à fait innovatrice, une sorte de projet-pilote⁹. L'expérience aidant, la politique a évolué à certains égards depuis 1987.

En juin 1989, le ministère des Transports rendait public un document énonçant 36 principes venant compléter la politique de 1987¹⁰. Dans le préambule, on précise entre autres que le conseil d'administration des administrations aéroportuaires locales doit être nommé suivant un processus agréé par les municipalités. Le document ne donne pas de détails sur les compétences requises des administrations éventuelles, mais met l'accent sur leurs responsabilités, notamment en ce qui concerne le respect des lois et programmes fédéraux, les transferts de personnel, les considérations commerciales et financières et les relations avec le public.

Selon Michael Farquhar, directeur général des Cessions d'aéroports à Transports Canada, c'est au début de 1990 qu'a été élaboré le principe voulant que la candidature au statut d'administration aéroportuaire locale soit appuyée par les pouvoirs publics locaux. À la suite d'un épisode où il avait été difficile de déterminer si la ville de Calgary avait effectivement appuyé un certain projet d'administration aéroportuaire, Transports Canada a précisé qu'il fallait que les principales administrations publiques de la région desservie par un aéroport adoptent chacune une résolution appuyant la structure d'une administration aéroportuaire proposée pour que celle-ci soit reconnue comme telle, mais n'a pas exigé cependant l'appui unanime de toutes les administrations publiques concernées¹¹.

3. La stratégie de 1989 relative aux aéroports du sud de l'Ontario

M. Glen Shortliffe nous a dit qu'à l'époque où il est devenu sous-ministre des Transports (avril 1988), il avait constaté que la politique était singulièrement muette au sujet de l'aéroport Pearson : «... la politique des gouvernements successifs, peu importe le parti au pouvoir, avait consisté à éviter de prendre des décisions sur l'aéroport Pearson et son avenir»¹². D'après lui, cette attitude tenait en partie à la vive controverse suscitée par la question de l'aménagement des aéroports au niveau local.

⁹ Voir *Délibérations*, 2:37.

¹⁰ Voir *Délibérations*, 2:37.

¹¹ Voir *Délibérations*, 5:69.

¹² Voir *Délibérations*, 4:66.

Étant donné qu'il fallait d'abord définir le rôle de l'aéroport Pearson dans le système de transport aérien national et régional pour pouvoir s'attaquer à des questions spécifiques, on a procédé à un examen de la politique en vue d'élaborer diverses propositions à soumettre aux ministres. Ce processus a abouti à l'annonce, en août 1989, par le ministre des Transports, M. Benoît Bouchard, et la ministre d'État aux Transports, M^{me} Shirley Martin, de la décision du gouvernement de développer l'aéroport Pearson jusqu'à sa capacité maximale pour en faire un centre névralgique du système national de transport aérien du Canada du XXI^e siècle¹³.

On avait alors également annoncé un certain nombre de mesures à court terme : le transfert de certains vols nolisés à des aéroports voisins, la rénovation à titre prioritaire des aérogares 1 et 2, la construction de deux nouvelles pistes et l'augmentation du nombre des contrôleurs de la circulation aérienne. La raison de ces mesures a par la suite été exposée plus en détail dans un exposé de principe de Transports Canada intitulé «L'aviation dans le sud de l'Ontario - Une stratégie pour le futur», daté de janvier 1990. Le document traite surtout de la croissance récente et projetée du trafic aérien, qui risquait de dépasser la capacité des pistes et des contrôleurs aériens, mais il mentionne aussi les effets économiques nuisibles de la congestion des aérogares et des garages de stationnement de l'aéroport¹⁴.

4. L'aérogare 3

Les décideurs chargés d'étudier les diverses modalités de participation du secteur privé dans les aérogares de l'aéroport Pearson pouvaient s'inspirer non seulement des politiques précitées, mais aussi de l'arrangement conclu à l'égard de l'aérogare 3, construit par une société privée sur un terrain acquis en 1987 aux termes d'un bail emphytéotique accordé par Transports Canada.

Les porte-parole du Ministère nous ont dit qu'on songeait depuis le milieu des années 70 à la construction d'une troisième aérogare à l'aéroport Pearson, mais que les responsables étaient plus ou moins convaincus d'une telle nécessité selon les fluctuations du trafic aérien associées aux grands cycles conjoncturels¹⁵.

La croissance du volume de trafic aérien en 1984 et 1985 a remis la question à l'avant-plan. Une note de service¹⁶ du ministère des Transports datée du 15 octobre 1985

¹³ Voir *Délibérations*, 4:67, et communiqué du Ministre, n° 98/89, août 1989.

¹⁴ Transports Canada, *L'aviation dans le sud de l'Ontario - Une stratégie pour le futur*, 1990, p. 9.

¹⁵ Voir *Délibérations*, 3:26.

¹⁶ Transports Canada, octobre 1985, document du comité 4-1#1023.

renvoie à une séance d'information tenue au mois de mars au cours de laquelle on aurait souligné l'urgence de construire une troisième aérogare, en partie à cause d'une soudaine augmentation du trafic aérien bien au-delà des niveaux prévus en 1984. Le ministre de l'époque, M. John Crosbie, s'est rendu aux arguments avancés, mais a décidé que c'était le secteur privé qui fournirait la nouvelle aérogare, le cas échéant. Selon le sous-ministre des Transports actuel, M. Nick Mulder, cette décision tenait aussi au fait que le Ministère n'échappait pas aux impératifs de réduction des dépenses publiques et que des promoteurs locaux étaient prêts à se mettre sur les rangs¹⁷.

Il semblerait que, à tout le moins au départ, le recours à un promoteur privé pour financer, construire et exploiter une aérogare était considéré comme une solution ponctuelle à une situation unique¹⁸. L'entreprise étant extrêmement complexe, et comme le Ministère ignorait qui seraient les promoteurs éventuels, le ministre a opté pour un processus d'appel d'offres en deux étapes : on solliciterait dans un premier temps des déclarations d'intérêt de manière à connaître les promoteurs intéressés et à se faire une idée des divers projets d'aménagement proposés. On préciserait ensuite les exigences du gouvernement dans une demande de propositions officielle, et les promoteurs admissibles soumettraient alors un projet détaillé qui ferait l'objet d'une étude en bonne et due forme.

La première étape a débuté avant même que les politiques ministérielles portant spécifiquement sur l'aménagement des aéroports ne soient finalisées. Le 11 septembre 1986 le ministre Crosbie a annoncé que le Ministère s'apprêtait à solliciter des déclarations d'intérêt (DI). Cette demande de déclarations d'intérêt, parue plus tard au cours du mois et fixant l'échéance au 19 novembre, a suscité huit réponses. Après étude de celles-ci, cinq proposant ont été invités, dans une Demande de propositions (DP) datée du 18 décembre 1986, à soumettre un projet détaillé.

Sur les cinq consortiums dont les DI ont été agréées, quatre ont soumis une proposition avant la date limite du 1^{er} mai spécifiée dans la DP : la Airport Development Corporation (l'entreprise de construction de Huang et Dansczkay), Falcon Star (groupe Matthews), Bramalea-Wardair et American Airlines-Cadillac Fairview¹⁹. Un groupe a demandé une prorogation, laquelle a été refusée²⁰.

¹⁷ Voir *Délibérations*, 2:41.

¹⁸ Voir *Délibérations*, 2:38.

¹⁹ Voir *Délibérations*, 2:28.

²⁰ Voir *Délibérations*, 2:37.

La DP définissait les critères pour trois points principaux : le plan d'aménagement, le plan d'entreprise et les qualifications des proposants. Parmi les critères relatifs au plan d'entreprise, dont un des témoins a dit qu'ils avaient un poids de quelque 40 p. 100, figure la viabilité financière de l'entreprise. On nous a aussi signalé l'inclusion d'une disposition type autorisant le gouvernement à mettre un terme à la recherche de propositions ou à la négociation d'ententes à n'importe quel moment (auquel cas les proposants pourraient éventuellement chercher à se faire indemniser)²¹. Par ailleurs, la DP exigeait le dépôt d'une caution d'exécution de 50 p. 100 et de cautions relatives à la main-d'oeuvre et au matériel.

On a constitué au sein du Ministère un comité de hauts fonctionnaires, appuyé par une équipe de conseillers privés en génie, en architecture et en gestion financière, pour évaluer les propositions. On a en outre retenu les services d'une firme de vérificateurs (Touche-Ross) chargée de superviser le processus d'évaluation et de fournir des conseils entre autres sur les questions de vente au détail et sur les aspects commerciaux.

Le processus d'évaluation a abouti au choix d'un proposant privilégié, la Airport Development Corporation, avec lequel (après agrément du ministre et du Conseil du Trésor) on a ensuite négocié les diverses modalités de l'accord d'aménagement.

Après la négociation de l'accord d'aménagement ont suivi l'approbation de l'accord par le Conseil du Trésor, la rédaction des baux en conformité de l'accord et leur approbation par le Conseil du Trésor, puis la signature de ces baux en avril 1988 et, enfin, le début des travaux. L'aérogare 3, pouvant accueillir une dizaine de millions de passagers, a ouvert le 21 février 1991.

Les représentants du Ministère que nous avons entendus étaient en général satisfaits de la procédure suivie dans le cas de l'aérogare 3. Victor Barbeau, le sous-ministre adjoint dont relevait le projet, s'est dit convaincu de la régularité de toutes les opérations, et d'autres fonctionnaires nous ont dit la même chose²².

²¹ Voir *Délibérations*, 3:34.

²² Voir *Délibérations*, 3:44 et 3:37.

5. Observations et conclusions

A. La politique de cession des responsabilités

Avec le recul, on se rend compte que l'orientation principale de la politique de cession des aéroports élaborée à la fin des années 80 avait déjà des accents qui laissaient préfigurer de l'avenir, dans la mesure où elle visait à détacher la gestion des aéroports de l'appareil bureaucratique centralisé à Ottawa et à créer une structure qui serait plus sensible aux priorités et aux besoins locaux. On cherchait en même temps à réaliser des gains d'efficacité en assujettissant davantage la gestion des aéroports aux impératifs de rentabilité commerciale et en confiant un plus grand nombre de fonctions au secteur privé. Le rôle d'Ottawa se bornerait à s'assurer que les grands objectifs d'intérêt public, comme la sécurité, continuent d'être respectés.

Durant les années 80, les déficits croissants et les pressions de la concurrence internationale ont forcé les gouvernements à admettre qu'il allait falloir repenser la prestation des services publics. À la fin des années 80, d'autres gouvernements démocratiques occidentaux, également aux prises avec des déficits importants et des méthodes administratives désuètes et inefficaces, se sont mis eux aussi à souscrire aux principes qui sous-tendaient la politique de transfert des responsabilités de 1987, laquelle consistait à préserver l'intérêt public tout en cédant au secteur privé les activités non essentielles. S'agissant de la gestion et de l'exploitation des aéroports, la politique de 1987 et ses améliorations subséquentes ont placé le Canada à l'avant-garde de cette tendance.

Au Canada, le gouvernement actuel et celui qui l'a précédé ont su voir les avantages de la politique de commercialisation et de cession des aéroports. Après l'examen approfondi de la politique des transports qui a eu lieu après les élections de 1993, le ministre des Transports actuel a publié, en juillet 1994, une Politique nationale des aéroports dans laquelle on affirmait la nécessité de commercialiser davantage le système de transport. Les aéroports figuraient sur la liste des activités qui pourraient être mieux assujetties aux impératifs du marché et aux principes commerciaux, et on disait envisager des partenariats entre le secteur public et le secteur privé²³.

En ce qui concerne les transferts de responsabilités de gestion des aéroports, les fonctionnaires entendus ont dit que la nouvelle politique complétait les principes fondamentaux des administrations aéroportuaires locales²⁴. La différence essentielle

²³ Transports Canada, *Politique nationale des aéroports*, juillet 1994, p. 2

²⁴ Voir *Délibérations*, 2:19.

était la présence de représentants des administrations locales et fédérales au sein des conseils d'administration des AAL, ce qui modifiait la structure hiérarchique établie dans la politique de 1987. Cependant, l'orientation fondamentale de la politique, axée sur le transfert des responsabilités de gestion des grands aéroports à des administrations aéroportuaires, est demeurée constante : de propriétaire-exploitant, le gouvernement fédéral deviendrait locateur et organisme de réglementation²⁵.

Nous en sommes arrivés à la conclusion que le bien-fondé de la politique de commercialisation et de transfert des responsabilités de 1987 était avéré, celle-ci ayant survécu à l'épreuve du temps et d'un changement de gouvernement.

B) La décision d'agrandir l'aéroport Pearson

Fondamentalement, on a décidé d'agrandir l'aéroport Pearson pour faire cesser les attermoissements et remédier aux difficultés résultant de l'intensification du trafic aérien à la fin des années 80. Ces difficultés tenaient en partie à une réforme antérieure de la réglementation qui avait amené les compagnies aériennes à adopter de nouvelles stratégies d'exploitation et de prix, notamment à favoriser une configuration en étoile avec des vols fréquents entre des aéroports servant de plaque tournante situés à des endroits stratégiques, eux-même alimentés par un trafic passagers provenant d'aéroports tributaires.

L'adoption de la configuration en étoile s'explique en partie par l'intensification de la concurrence qui a résulté de la déréglementation, et elle a permis aux compagnies aériennes d'offrir des services plus compétitifs sur le plan de la fréquence des vols, du nombre des destinations et des prix (grâce à l'utilisation optimale des avions). À Pearson, ce nouveau système a exacerbé les problèmes de congestion, qui frappaient déjà l'ensemble du réseau, si bien qu'il fallait trouver une solution. Vu le nouveau rôle de plaque tournante de l'aéroport Pearson, tout retard risquait de faire reporter des vols à Halifax, Vancouver, Edmonton, Calgary, Winnipeg, Ottawa et Montréal, par exemple, ou d'en faire annuler à Londres, Paris, Frankfurt et Tokyo²⁶.

Il y avait un autre emplacement possible pour un aéroport «plaque tournante» dans la région de Toronto : Pickering. L'exposé de principe de 1990 dans lequel Transports Canada explique la décision d'agrandir l'aéroport Pearson précise que cette solution avait été retenue en 1968. Les travaux avaient cependant dû être interrompus en 1975 parce qu'ils avaient suscité un tollé et que le gouvernement provincial avait refusé les routes et les

²⁵ Voir *Délibérations*, 4:86.

²⁶ Voir *Délibérations*, 4:91.

Chapitre I - Le cadre stratégique

services publics indispensables. Selon M. Glen Shortliffe, qui nous a donné un aperçu des questions de politique générale, plusieurs ministres sous divers gouvernements se sont efforcés en vain de rediriger le trafic aérien vers l'aéroport de Mirabel²⁷. Il aurait été illusoire de revenir à la charge à Pickering à la fin des années 80: la controverse aurait tout simplement repris, d'autant plus vive que les gens craignaient aussi que l'on puise dans les deniers publics pour finalement créer un autre «éléphant blanc» comme à Mirabel.

Grâce à la déréglementation du milieu des années 80, les compagnies aériennes avaient désormais toute latitude pour s'adapter à l'évolution du marché. Or, à la fin des années 80, le marché avait clairement décidé où étaient les besoins. Restait au gouvernement à l'admettre, ce qu'il a fait lorsqu'il a décidé d'agrandir l'aéroport Pearson.

C) L'aérogare Trois

L'attribution du bail foncier à long terme à la firme Huang et Dansczkay pour la construction de l'aérogare 3 a représenté une réaction hâtive des pouvoirs publics aux pressions et contraintes systémiques qui allaient ultérieurement aboutir à la formulation d'une politique en bonne et due forme, vers la fin des années 80. Elle a représenté en quelque sorte un banc d'essai pour faire l'épreuve de certains principes qui se retrouveraient ultérieurement dans la politique de 1987 sur les administrations aéroportuaires locales, en particulier sur le plan de la plus grande participation de l'entreprise privée pour améliorer la faculté d'adaptation aux besoins et l'efficience.

L'aérogare 3 de l'aéroport Pearson n'était pas encore inaugurée lorsque le gouvernement a annoncé son intention de solliciter des propositions de modernisation des autres aérogares. Les travaux étaient cependant suffisamment avancés pour témoigner de la faisabilité d'un partenariat des secteurs public et privé. L'ensemble de l'entreprise prouvait que les objectifs poursuivis par l'administration publique et l'entreprise privée en matière d'aérogares n'étaient pas forcément incompatibles et pouvaient même être complémentaires. Il suffisait simplement que les deux camps fassent preuve d'un peu d'imagination et soient disposés à remettre en question de vieilles habitudes.

Nous avons conclu que, lorsque la politique initiale de cession de la gestion des aéroports a été élaborée en 1987, l'aérogare 3 avait déjà établi un précédent d'une importance fondamentale attestant de la faisabilité d'un partenariat des secteurs public et privé dans ce genre d'entreprise, précédent qui conférait une certaine crédibilité à l'orientation commerciale décrite dans cette politique.

²⁷ *Rapports du vérificateur général*, octobre 1990. Voir aussi *Délibérations*, 30:12 et 30:28 et suivants.

D) Le rapport du vérificateur général

Dans son rapport de 1990, le vérificateur général du Canada formulait certaines critiques à l'endroit de la politique de Transports Canada. On reprochait notamment au Ministère l'absence de stratégie d'ensemble pour réagir aux conséquences de la déréglementation (entre autres une augmentation du trafic déjà sensible aux États-Unis) et l'absence d'un plan de financement reposant sur une analyse des répercussions d'une participation accrue d'intérêts privés dans les aéroports et l'absence d'un plan d'ensemble pour le financement des infrastructures d'aéroport.²⁸

Ces remarques évoquent un problème plus vaste auquel le Ministère devait faire face à la fin des années 80 : comment répondre aux exigences nouvelles de l'élaboration de politiques stratégiques dans des domaines comme la cession d'aéroports alors que les points forts des fonctionnaires sont l'administration et la gestion directe des aéroports?

La politique de cession d'aéroports de 1987 reflète fidèlement les points forts et les points faibles implicites dans cette situation. La politique initiale, avec ses suppléments, est très détaillée au sujet des questions d'administration, comme les attributions respectives du gouvernement et d'une administration aéroportuaire locale. Elle est en revanche beaucoup plus vague sur les critères d'agrément des administrations aéroportuaires locales, par exemple. Comme on le verra plus loin, cette imprécision a causé des problèmes et des malentendus tenaces.

En toute justice, il faut reconnaître que le ministère des Transports n'était pas le seul pour lequel l'élaboration de politiques présentait des difficultés nouvelles, et que le vérificateur général en a critiqué d'autres à cet égard. Dans l'ensemble, les ministères «opérationnels» qui avaient jusqu'à présent surtout des fonctions d'administration et de prestation de services ont beaucoup de mal à s'adapter aux réalités nouvelles que recouvre l'expression «réinventer le gouvernement».

Tout bien considéré, si la qualité technique des lignes directrices du ministère des Transports laissait peut-être un peu à désirer, la politique était néanmoins conforme aux normes. Il faut y voir un premier essai innovateur en vue d'aborder des sujets nouveaux, comme la cession de la gestion d'aéroports.

²⁸ *Rapport du vérificateur général*, octobre 1990, *Délibérations* 30:12 et 30:28 et suivants

E) Conclusions

Mettant pour la première fois l'accent sur l'orientation commerciale et la participation du secteur privé, la politique de cession de la gestion d'aéroports de 1987 ne se contentait pas de proposer une solution innovatrice aux problèmes que présentait le rôle de Transports Canada dans la gestion des aéroports au milieu des années 80. **Elle préfigurait les vastes mesures des années 90, notamment l'examen des programmes de 1994-1995, avec son ambitieuse tentative de redéfinir le rôle du gouvernement dans l'économie.**

À notre avis, les fonctionnaires qui ont conçu la nouvelle politique des aéroports des années 80 devaient avoir le sentiment d'avoir accompli quelque chose d'important, car on leur doit la première étape, essentielle, de la réorientation de la politique dans ce secteur. Il importe aussi de dire que la vision qui a guidé les fonctionnaires témoignait presque d'une certaine prescience de ce qui allait se passer dans les années 90.

J'ai donc dit que si l'on devait retarder de quelque façon que ce soit les travaux de rénovation des aérogares 1 et 2, il faudrait les fermer.

Hazel McCallion
Maire de Mississauga

1993 était le moment idéal pour entreprendre les travaux de réaménagement de l'aérogare 2, étant donné que le nombre de voyageurs était moins élevé.

David Robinson
Air Canada

Le gouvernement a décidé d'inviter le secteur privé à présenter des propositions sur la modernisation des aérogares 1 et 2 après avoir examiné la situation à l'aéroport Pearson à la lumière des objectifs et des priorités figurant dans son cadre stratégique.

Un facteur déterminant pour les décideurs était l'état des aérogares, compte tenu notamment des contraintes du volume du trafic-passagers. Les propositions présentées spontanément par divers promoteurs, témoignent du vif intérêt pour la participation du secteur privé, ainsi que l'engagement de lobbyistes chargés de défendre certaines propositions. Il convenait également de tenir compte des tentatives pour créer à Toronto une administration aéroportuaire locale, puisque celle-ci aurait été à même d'assumer la responsabilité des décisions touchant le réaménagement.

1. L'aéroport Pearson à la fin des années 80

Les témoins que nous avons entendus étaient en général unanimes à reconnaître qu'à la fin des années 80, l'aéroport Pearson éprouvait de graves problèmes. Cette réalité sautait aux yeux du premier voyageur venu soumis à des retards parfois assez longs à l'atterrissage, à des files d'attentes et à d'autres inconvénients de ce genre.

M. Glen Shortliffe, sans doute celui de nos témoins qui a le moins mâché ses mots, était sous-ministre des Transports à l'époque et, selon lui, il était clair que dès 1988 «cet

Chapitre II - La décision de réaménager les aérogares 1 et 2

aéroport [Pearson] était un vrai gâchis. Une honte. Et pis encore, il ne fonctionnait pas»²⁹. À ce sujet, M. Shortliffe a notamment fait état du nombre insuffisant de contrôleurs aériens, compte tenu du trafic existant et des augmentations prévues, du manque de pistes et, enfin, de l'état de détérioration de l'aérogare 1 qui était tel, que l'endroit était devenu «sordide» et difficilement accessible en raison de la fermeture fréquente du garage de stationnement. La situation n'était guère plus reluisante à l'aérogare 2, à cause de l'insuffisance de portes. Selon M. Shortliffe, la remise en état des aérogares s'imposait, peu importe ce qui allait être décidé pour les contrôleurs et les pistes³⁰.

M. Doug Lewis, ministre des Transports à l'époque (1990), est du même avis que M. Shortliffe. Il nous a souligné que les deux aérogares avaient été conçues pour accueillir jusqu'à 12 millions de voyageurs par année, mais que 20 millions y avaient transité en 1990. La surutilisation des installations entraînait toute une série de retards au sol, notamment des difficultés à trouver un taxi, des files d'attente aux comptoirs des douanes et l'entassement des voyageurs. Nous n'avons pas recueilli le témoignage du prédécesseur immédiat de M. Lewis, M. Benoît Bouchard, mais le fait que celui-ci ait fait mention du réaménagement des aérogares 1 et 2 dans son exposé de politique du 18 août 1989 montre qu'il en voyait aussi la nécessité.

D'autres témoins, dont certains se trouveront plus tard en désaccord avec le gouvernement sur la façon de réaménager les aérogares, semblent avoir largement partagé le point de vue du ministre et des hauts fonctionnaires à la fin des années 80. M. Gerard Meinzer, qui était récemment président de la chambre de commerce du Grand Toronto, en plus d'avoir présidé les travaux du groupe de travail qui a créé l'organisme qui devait plus tard solliciter le statut d'administration aéroportuaire locale, a affirmé au Comité que l'aéroport Pearson était perçu comme un «modèle de négligence» et qu'à la fin des années 80, ses problèmes de capacité d'accueil semblaient urgents³¹. À mesure que la récession s'est installée, le sentiment d'urgence s'est atténué, et les organisateurs de l'administration aéroportuaire locale ont jugé utile d'en profiter pour parachever l'organisation³².

En tant que principal occupant de l'aérogare 2, Air Canada était un client important de Transports Canada et un des principaux intervenants dans la définition des besoins de réaménagement. Selon les témoins d'Air Canada, à mesure que le trafic augmentait à la fin des années 80 et qu'il est devenu évident que l'aérogare 3 allait offrir un avantage

²⁹ Voir *Délibérations*, 4:64.

³⁰ Voir *Délibérations*, 4:80.

³¹ Voir *Délibérations*, 5:58.

³² Voir *Délibérations*, 5:21.

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concurrentiel aux lignes aériennes desservies à cet endroit, Air Canada a établi un plan directeur en deux étapes pour la remise en état de l'aérogare 2³³.

La première étape des travaux, cofinancés par Air Canada et Transports Canada et portant sur la rénovation de la zone réservée aux vols nationaux, a été entamée en 1989 et devait être terminée en 1991. Dans le cas de la seconde étape, soit le réaménagement des aires réservées aux vols internationaux, il était évident dès 1989, que Transports Canada ne serait pas en mesure de fournir le financement nécessaire. En conséquence, Air Canada a examiné les propositions spontanées soumises par différents promoteurs du secteur privé disposés à prendre en charge les coûts de réaménagement et, en juin 1990, la société a fait savoir à Transports Canada qu'elle appuyait la proposition de Paxport. En 1989 et 1990, Air Canada voulait essentiellement «trouver une solution pour l'aérogare»³⁴. Le maintien et, dans certains cas, l'établissement de rapports avec les gouvernements et les autres participants éventuels semblent avoir été guidés invariablement par ce seul objectif.

2. Initiatives des promoteurs

A) Propositions spontanées

Dès le début de 1989, le Ministère a commencé à recevoir des propositions spontanées sur le réaménagement soit de l'aérogare 2, soit des aérogares 1 et 2. Les premières propositions sont venues de sociétés qui avaient déjà des intérêts dans l'aéroport Pearson et étaient convaincues de l'urgence d'agir.

La première des cinq propositions spontanées dont on nous a parlé est celle qu'a présentée en mars 1989 l'Airport Development Corporation, société qui avait été mise sur pied par l'entreprise Huang et Dansczkay, constructeurs de l'aérogare 3. En mai 1989, Air Canada a présenté à son tour une proposition, axée sur ses besoins dans l'aérogare 2.

À l'automne 1989, le ministre des Transports a reçu plusieurs autres propositions spontanées faisaient suite au feu vert que donnait implicitement à la participation du secteur privé l'exposé de politique ministérielle portant sur la nécessité d'accroître la capacité de l'aéroport Pearson (18 août 1989).

³³ Voir *Délibérations*, 12:75.

³⁴ Voir *Délibérations*, 12:85.

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En septembre 1989, le gouvernement a reçu une proposition de la société Paxport Inc., consortium formé au début de l'été 1989 et réunissant le groupe Matthews et Bramalea Inc.³⁵.

Une proposition a été présentée au début de 1990 par Canadian Airports Limited, consortium dont la principale entreprise constituante était la British Airports Authority PLC³⁶. Enfin, en juin 1990, Air Canada a soumis une proposition élaborée par Paxport, accompagnée d'une déclaration de son appui à cette proposition.

Un fonctionnaire du ministère des Transports nous a indiqué que les propositions spontanées ont habituellement peu d'impact sur la prise de décisions, parce qu'il n'y a pas eu de processus d'adjudication officiel informant toutes les parties intéressées des critères à respecter. On nous a dit que les propositions spontanées pour le réaménagement des aéroports 1 et 2 ont suivi la filière habituelle, c'est-à-dire qu'elles ont attendu sur des tablettes jusqu'à ce qu'il soit convenu de donner suite au projet de réaménagement au moyen d'une demande de propositions officielle auprès des promoteurs du secteur privé. Ceux-ci ont ensuite été consultés par les hauts fonctionnaires chargés de définir les options techniques afin de préparer la demande de propositions³⁷.

B) Suivi

Selon les témoignages recueillis, les promoteurs ne se sont pas contentés de soumettre des propositions spontanées au gouvernement et d'attendre passivement une réponse. Au contraire, ils ont entrepris une vaste campagne pour se gagner des appuis au sein du gouvernement et auprès des autres intervenants dans le dossier de l'aéroport Pearson. Le ministre en poste à l'époque était au courant de leurs démarches; il a eu, au sujet du lobbying, le commentaire suivant : «c'est une réalité incontournable [...] Enfin, personne, aucun gouvernement, qu'il soit libéral, conservateur ou autre, ne veut être prisonnier des lobbyistes»³⁸.

On nous a informés dans le détail des démarches de Paxport à cet égard. Cela tient au fait que la proposition de Paxport ayant été jugée la meilleure, son premier président, M. Raymond Hession a été interrogé de près sur les activités de Paxport. M. Hession s'est montré très coopératif, allant même jusqu'à mettre son journal personnel à notre disposition.

³⁵ Voir *Délibérations*, 8:80 et 9:22.

³⁶ Voir *Délibérations*, 6:42.

³⁷ Voir *Délibérations*, 2:45 et 6:45.

³⁸ Voir *Délibérations*, 4:19.

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À peine constitué, le groupe a cherché activement, à se gagner l'appui d'Air Canada en insistant sur l'incapacité du gouvernement de financer les travaux d'aménagement nécessaires à l'aérogare 2 de manière à ce qu'Air Canada n'ait pas à craindre de perdre son avantage concurrentiel aux mains de lignes aériennes concurrentes avec l'ouverture prochaine de l'aérogare 3³⁹.

Cette initiative a permis à Paxport d'établir et de maintenir d'excellents rapports avec Air Canada, comme en fait foi d'ailleurs l'appui accordé par la compagnie à la proposition spontanée de Paxport. Dans une lettre au ministre Lewis en date du 1^{er} juin 1990, M. Jeannot, alors président d'Air Canada, fait mention d'une rencontre, le 4 juin, au cours de laquelle Air Canada a exprimé son appui à la proposition spontanée de Paxport. La lettre fait aussi état de la vive opposition d'Air Canada à l'idée de lancer un appel d'offres qui risquerait de se solder par l'acceptation d'une proposition de réaménagement coûteuse, dont le fardeau finirait par retomber sur les épaules d'Air Canada à cause de son statut de locataire⁴⁰.

De même, selon des documents internes de Paxport remis au Comité, il y a eu par la suite d'autres réunions entre Air Canada et les représentants de Paxport pour fixer les détails d'une campagne de lobbying conjointe auprès de ministres et de fonctionnaires et pour établir les questions à régler au cours des mois d'août et septembre 1990, soit immédiatement avant la tenue d'une réunion du Cabinet prévue pour étudier les propositions du ministre Lewis⁴¹.

Par ailleurs, M. Hession nous a indiqué que la société suivait de près le processus décisionnel au gouvernement sur la question du réaménagement de l'aérogare. Dans une note du 12 juillet 1990, préparée à l'intention des cadres de Paxport, on trouve le résumé d'un rapport complet fait à M. Neville (lobbyiste pour Paxport) par M. Warren Everson, adjoint administratif de la ministre d'État aux Transports, M^{me} Shirley Martin, au sujet des discussions qui s'étaient déroulées lors d'une réunion la semaine précédente du Comité des priorités et de la planification. La note de service portait notamment sur les sujets suivants : les questions relatives à l'aéroport Pearson auxquelles le gouvernement entendait s'attaquer; la réticence du ministre face au processus non concurrentiel pour la sélection d'un promoteur préconisé par certaines propositions spontanées, dont celle d'Air Canada-Paxport; l'avis de certains hauts fonctionnaires du ministère des Transports qui ne jugeaient pas urgent l'agrandissement des aérogares 1 et 2; la structure envisagée pour la sélection d'un promoteur en régime concurrentiel. Selon M. Hession, il s'agissait là de sujets dont il était beaucoup question au Ministère, de sorte que la note n'avait rien d'exceptionnel.

³⁹ Voir *Délibérations*, 9:24.

⁴⁰ Voir *Délibérations*, 12:115.

⁴¹ Voir *Délibérations*, 9:26.

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M. Hession a entrepris de rencontrer tous les principaux intéressés pour les convaincre de la nécessité de réaménager les aérogares 1 et 2 et du fait que la proposition de Paxport était la formule la plus efficace pour y arriver. Il a ainsi contacté les PDG de bon nombre de grandes entreprises de Toronto, «dont certains, je suis ravi de le dire, ont écrit au ministre pour lui faire comprendre, ainsi qu'il l'a dit lui-même, qu'il fallait agir»⁴².

Les auteurs des autres propositions spontanées ne nous ont pas fourni ce genre de détails, mais il est réaliste de supposer qu'eux aussi sont activement intervenus auprès des fonctionnaires eux-mêmes et, indirectement, auprès des administrations municipales, des locataires et des utilisateurs de l'aéroport Pearson ou par leur intermédiaire pour vendre leur idée.

Il est logique aussi de penser que les démarches des promoteurs ont renforcé chez les élus et les fonctionnaires fédéraux l'idée de l'urgence des problèmes des aérogares 1 et 2. Par ailleurs, ceux-ci ont affirmé qu'ils étaient parfaitement conscients de l'existence d'un lobbyisme actif. Ils sont toutefois d'avis que ce facteur n'a pas modifié le cours des événements, en partie parce que les promoteurs n'étaient pas les seuls à faire du lobbyisme. Ainsi, la chambre de commerce de Toronto avait invité ses membres à se lancer dans une campagne épistolaire et avait informé le ministre des résultats.

3. Initiatives de l'administration aéroportuaire locale

Comme nous l'avons vu, la politique de 1987 sur la cession de la responsabilité des aéroports laissait aux groupes locaux le soin de constituer des autorités aéroportuaires locales, d'obtenir suffisamment d'appuis de la part des municipalités concernées et de faire en sorte d'être reconnus par Transports Canada. Dès le début de 1990, des groupes avaient été reconnus à des fins de négociation dans un certain nombre de collectivités, et les négociations devant finalement mener à la création d'administrations aéroportuaires locales étaient en cours à Edmonton, Calgary, Montréal et Vancouver.

En 1990, les démarches entreprises en faveur de la création d'une administration aéroportuaire locale à Toronto restaient vaines, malgré l'appui de la chambre de commerce du Grand Toronto à une telle initiative, depuis le milieu des années 70⁴³. Selon M. Gary Harrema, président du conseil régional de Durham durant cette période, la politique de 1987 et le désir de ne pas être devancé par Vancouver ou Montréal a fortement incité le milieu des affaires de la région torontoise à réclamer la création d'une administration aéroportuaire locale. Les obstacles politiques à la concrétisation de ce vœu étaient toutefois

⁴² Voir *Délibérations*, 8:81.

⁴³ Voir *Délibérations*, 5:37.

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considérablement plus grands dans l'agglomération torontoise qu'ailleurs, en raison de la structure gouvernementale ou, plus précisément, de l'absence de structure. Cinq municipalités régionales regroupant quelque 35 administrations locales, ont uni leurs efforts en faveur de cette initiative, mais il leur a fallu beaucoup de temps pour s'organiser en raison de l'absence de système de partis⁴⁴.

Aux dires de M. Gardner Church, qui était à l'époque sous-ministre du gouvernement ontarien pour la région du Grand Toronto, un début de mouvement en faveur de la création d'une administration aéroportuaire locale était perceptible dès 1989 chez les dirigeants des conseils régionaux de la région. En 1990, les conseils régionaux se sont entendus sur le cadre de fonctionnement d'une administration aéroportuaire, et un premier pas a été franchi en vue de la désignation de candidats aptes à en former le conseil⁴⁵. Selon M. Church, le principal différend qui opposait les dirigeants des conseils régionaux au gouvernement fédéral entre le milieu et la fin de 1990 portait sur le refus de celui-ci d'admettre la présence d'élus au sein du conseil d'une administration aéroportuaire (cela étant perçu, à l'échelle locale, comme un obstacle à l'obligation de rendre compte des élus)⁴⁶.

M. Church poursuit en disant que malgré le «mouvement» en question, Toronto accusait toujours, au début des années 90, un retard sur des villes comme Vancouver ou Pittsburg en termes d'installation aéroportuaires et d'infrastructures publiques⁴⁷. Et on ne pouvait pas blâmer le gouvernement pour cela, ni sa politique de reconnaissance des administrations aéroportuaires locales :

Je crois qu'il ne fait aucun doute que Toronto tirait de l'arrière, et il est simplement incorrect de jeter le blâme sur le gouvernement fédéral⁴⁸

Les documents d'information fournis aux chefs des divers conseils municipaux qui cherchaient à constituer une administration aéroportuaire locale montrent clairement qu'à la fin de 1990, on n'en était encore qu'aux premiers balbutiements. Une note de M. D. A. Lychak, directeur général des services municipaux de Mississauga, envoyée aux chefs de conseil le 3 décembre 1990, soit avant une réunion prévue avec le ministre Lewis, indique qu'il sera impossible de présenter un front uni au ministre, puisque les toutes premières étapes seulement de l'analyse du projet ont été réalisées. La note recommandait

⁴⁴ Voir *Délibérations*, 5:37 et 5:16.

⁴⁵ Voir *Délibérations*, 5:43.

⁴⁶ Voir *Délibérations*, 5:13.

⁴⁷ Voir *Délibérations*, 5:42.

⁴⁸ Voir *Délibérations*, 5:54.

en outre aux chefs de conseil qu'ils fassent part au ministre de leur crainte que le réaménagement des aérogares 1 et 2 ne nuise à la viabilité d'une éventuelle administration aéroportuaire et qu'ils constituent dans les plus brefs délais un groupe de travail de 21 personnes chargées de réaliser des études du scénario de référence par rapport à l'aéroport Pearson, aux terres de Pickering, à l'aéroport de Hamilton et à l'aéroport de l'île de Toronto⁴⁹.

4. La décision de procéder au réaménagement

Au début de 1990, pour faire suite à l'annonce de 1989 sur la stratégie concernant les aéroports du sud de l'Ontario, le ministère des Transports a publié un document d'orientation où figuraient les prévisions relatives au volume du trafic aérien à l'aéroport Pearson. Selon ces chiffres, le volume annuel, qui était de 348 000 avions en 1988, allait atteindre entre 356 000 et 485 000 en 1996, et se situer entre 379 000 et 541 000 en 2001. Ces hausses s'ajoutaient à l'augmentation enregistrée entre 1983 et 1988, le nombre d'avions étant passé de 240 000 à 348 000, d'où un accroissement du nombre de voyageurs d'environ 40 p. 100, soit de 14 à 20 millions de personnes. Tous ces voyageurs avaient transité par les aérogares 1 et 2, dont la capacité d'accueil prévue initialement était de 12 millions de voyageurs par année; l'aérogare 3, avec sa capacité d'accueil de 10 millions, n'était pas encore opérationnelle. Résumant la situation, les auteurs de l'étude faisaient mention de problèmes de congestion dans les locaux de l'aérogare et les stationnements ainsi que de la perte de congrès pour la région de Toronto⁵⁰. De même, les auteurs estimaient que dès 1996, le réseau de pistes existant ne pourrait plus suffire à la demande prévue.

Selon le ministre Lewis, il n'était pas rare qu'on lui signale des exemples précis de problèmes au sujet de l'aéroport Pearson : «du jour où j'ai été nommé au jour où j'ai quitté mes fonctions, il s'est rarement écoulé une journée complète sans que l'on signale à mon attention qu'il fallait "régler le problème à Pearson"»⁵¹. M. Lewis a fait expressément mention de plaintes de la chambre de commerce du Grand Toronto, du gouvernement provincial et des administrations municipales ainsi que des usagers du monde des affaires⁵².

Au début de l'automne 1990, le ministre Lewis était toujours d'avis que les usagers et les locataires s'entendaient en général pour reconnaître que l'aéroport Pearson «était utilisé

⁴⁹ Voir *Délibérations*, 4:54.

⁵⁰ Canada, Transports Canada, *L'aviation dans le sud de l'Ontario - Une stratégie pour le futur*, janvier 1990, p. 9.

⁵¹ Voir *Délibérations*, 4:6.

⁵² Voir *Délibérations*, 4:7.

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à l'excès, qu'il était ni sécuritaire ni fiable, qu'il était une honte pour le Canada»⁵³. Persuadé que les électeurs exigeaient une intervention de sa part et qu'un refus d'agir risquait de nuire à l'économie de la région de Toronto, le gouvernement a décidé de lancer sans tarder un programme pour améliorer les installations de l'aéroport. De fait, toute proposition à cet égard devait obligatoirement viser à «régler le problème rapidement et adéquatement»⁵⁴.

Au moment de cette décision, le gouvernement connaissait le point de vue des représentants de la région du Grand Toronto, qui avaient demandé que toute décision quant au réaménagement soit reportée afin que cette administration puisse elle-même s'en charger. Le ministre était toutefois d'avis que tout le dossier de la cession des aéroports, même là où les discussions se déroulaient relativement bien, «avançait très, très lentement. Au bout de plus de trois ans, aucun des projets n'était près de se concrétiser»⁵⁵. Une situation se présentait qui était perçue comme étant unique à Toronto : les municipalités et les responsables de la région du Grand Toronto n'avaient pas réussi à s'entendre sur le fonctionnement d'une administration aéroportuaire locale. De l'avis du ministre, l'idée de créer une administration aéroportuaire locale «ne semblait tout simplement pas viable»⁵⁶.

La question du financement posait aussi un problème. Le gouvernement ne s'estimait pas en mesure de financer le réaménagement à partir de ses recettes générales, étant donné sa situation financière difficile. La principale option qui s'offrait à lui en matière de financement -- en l'occurrence l'imposition de droits aux utilisateurs des aérogares (redevances d'installation passagers) -- était considérée comme politiquement inacceptable, compte tenu de l'ampleur de la réaction du public à la TPS, qui était alors à son comble. De même, l'association d'aérogares gérées par le secteur privé et par le secteur public à l'aéroport Pearson aurait rendu difficile l'imposition de tels droits⁵⁷.

Par ailleurs, la décision d'intervenir obligeait le gouvernement à prendre en considération plusieurs problèmes indissociables, notamment la capacité des pistes, l'impact sur l'environnement de l'augmentation du nombre de pistes et du volume du trafic aérien, et les aérogares. Selon le ministre Lewis, le problème dans le cas des pistes et du réaménagement des aérogares était de savoir «lequel venait en premier, la poule ou l'oeuf», et la meilleure façon d'y remédier consistait à s'attaquer aux deux en même temps. Toute

⁵³ Voir *Délibérations*, 4:8.

⁵⁴ Voir *Délibérations*, 4:8.

⁵⁵ Voir *Délibérations*, 4:9.

⁵⁶ Voir *Délibérations*, 4:10.

⁵⁷ Voir *Délibérations*, 4:9.

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décision touchant les aérogares devait donc être prise parallèlement à l'évaluation des incidences environnementales, qui devait se faire avant la construction des nouvelles pistes⁵⁸.

Comme l'option de l'administration aéroportuaire locale n'était pas réalisable à ce moment-là, l'idée d'offrir à des intérêts privés une option de location, de rénovation et d'exploitation semblait être la seule solution possible. Lors de sa comparution, le ministre Lewis a fait valoir plusieurs arguments en faveur de cette option. L'idée n'était pas entièrement nouvelle; il s'agissait en fait d'accroître le recours à des contrats de location, mécanisme déjà largement répandu dans le réseau aéroportuaire. Le projet permettrait de régler au bon moment les problèmes des aérogares 1 et 2, selon le modèle de l'aérogare 3, qui «n'a pas coûté un cent aux contribuables»⁵⁹. En outre, grâce au maintien de son statut de propriétaire, l'État pouvait continuer à exercer une surveillance à des fins de sécurité, tout en laissant la voie libre au secteur privé pour apporter des améliorations par ailleurs.

Le 17 octobre 1990, le gouvernement a annoncé qu'il était prêt à accueillir des propositions sur le réaménagement des aérogares 1 et 2. Le lendemain, le ministre Lewis a informé les promoteurs intéressés de l'urgence de la situation et de la décision du Cabinet d'accélérer le dossier de façon que les rénovations puissent être effectuées dans les plus brefs délais. Selon le Ministre, l'ensemble du projet (à l'exception des grandes décisions d'orientation devant à l'occasion être déferées aux ministres) a ensuite été confié aux fonctionnaires du Ministère qui devaient élaborer une demande de propositions officielle dans laquelle seraient énoncés les attentes du gouvernement et les critères d'évaluation des propositions.

5. Observations et conclusions

A) Déroulement du processus

Une des allégations les plus graves formulées au sujet des accords de l'aéroport Pearson a trait à la possibilité que ceux-ci aient souffert du fait que des fonctionnaires aient pu être gênés dans l'exercice de leurs fonctions par les lobbyistes ou les pressions excessives des milieux politiques.

Comme pour les autres étapes du processus, nous avons systématiquement demandé aux fonctionnaires qui ont joué un rôle important dans la décision d'inviter le secteur privé à faire des propositions de nous donner leur avis sur le déroulement du processus. Il leur a notamment été demandé s'ils estimaient personnellement que l'obligation de procéder

⁵⁸ Voir *Délibérations*, 4:6.

⁵⁹ Voir *Délibérations*, 4:10.

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rapidement avait nui à leur travail, s'ils avaient fait l'objet d'ingérences politiques, si les lobbyistes avaient influencé leurs décisions et si, de façon générale, ils croyaient que le processus s'était déroulé régulièrement.

Tous les responsables, sans exception, ont répondu du bon déroulement du processus auquel ils avaient pris part. Ce processus, jusqu'à l'annonce que le secteur privé serait invité à soumettre des propositions, a reçu l'aval notamment de M. Douglas Lewis, ministre des Transports à l'époque, de M. Glen Shortliffe, sous-ministre des Transports pendant cette période (à l'exception des derniers mois)⁶⁰, de M^{me} Huguette Labelle, sous-ministre pendant les derniers mois de la période⁶¹, et de Victor Barbeau, sous-ministre adjoint chargé des aéroports⁶².

Au sujet de l'influence que les lobbyistes ont pu avoir, le commentaire de M. Shortliffe a été on ne peut plus direct : «Je dois avouer, monsieur, que j'ai vu au fil des années beaucoup de lobbyistes être grassement payés pour n'exercer en fin de compte aucune influence sur la façon dont les projets sont élaborés, négociés et décidés»⁶³.

Cependant, les témoignages que nous avons entendus portent à croire que les lobbyistes ont été plus efficaces lorsqu'il s'agissait de se renseigner au moment opportun sur l'état des décisions du gouvernement au sujet de questions intéressant leurs employeurs. Certes, réunir des informations ne signifie pas exercer une influence, et la collecte dans ce cas-ci n'a pas compromis les décisions qui ont finalement été prises, mais nous estimons utile de servir une mise en garde au personnel de ministres et d'autres fonctionnaires dans le secret des discussions du Cabinet. Quand certains savent quelque chose et que d'autres sont curieux, il y aura toujours quelqu'un pour succomber à la tentation de se donner plus d'importance, ne serait-ce que temporairement. Par ailleurs, la divulgation de secrets du Cabinet constitue une infraction, et l'auteur d'un tel acte s'expose à des poursuites.

Les audiences n'ont révélé aucun élément pouvant contredire ce que les participants ont affirmé à l'unanimité concernant la parfaite intégrité du processus et de son aboutissement, soit la décision de solliciter les propositions du secteur privé. Nous en venons à la conclusion que le processus a permis aux représentants du peuple, démocratiquement élus, de servir l'intérêt public tel qu'ils le concevaient.

⁶⁰ Voir *Délibérations*, 4:92.

⁶¹ Voir *Délibérations*, 8:39.

⁶² Voir *Délibérations*, 3:43.

⁶³ Voir *Délibérations*, 3:43.

B) La politique

En 1990, le ministre Lewis et le gouvernement étaient aux prises avec deux questions fondamentales concernant les aérogares 1 et 2 à l'aéroport Pearson. La première était de savoir si les aérogares avaient vraiment besoin d'être modernisées. Dans l'affirmative, il fallait ensuite décider de la façon de financer et de réaliser le réaménagement, de l'éventuelle participation du secteur privé et, le cas échéant, déterminer l'ampleur et la nature de cette participation. Ces questions doivent être examinées dans l'ordre.

i) Le réaménagement était-il nécessaire?

La nécessité de moderniser les aérogares 1 et 2 de l'aéroport Pearson semblait faire l'unanimité à la fin des années 80. Nos audiences ont permis de confirmer qu'Air Canada, les intervenants qui cherchaient à constituer une administration aéroportuaire locale, les promoteurs et le gouvernement fédéral s'entendaient pour dire que le réaménagement était nécessaire. Ainsi, les différends concernaient non pas la nécessité de la modernisation, mais bien le calendrier et le rythme à adopter. Comme l'a dit la mairesse de Mississauga, M^{me} Hazel McCallion, et son commentaire traduit le sentiment, au début des années 90, de la municipalité la plus directement touchée par l'accord Pearson et qui connaissait le mieux le dossier :

J'ai [...] dit que si l'on devait retarder de quelque façon que ce soit les travaux de rénovation des aérogares 1 et 2, il faudrait les fermer⁶⁴.

Nous n'avons rien entendu, cinq ans plus tard, qui contredise le verdict unanime de ceux qui connaissaient le mieux l'aéroport Pearson, c'est-à-dire les personnes qui y travaillaient et qui l'utilisaient tous les jours. Nous sommes donc arrivés à la conclusion que la décision du gouvernement d'inclure les aérogares 1 et 2 dans son programme de réaménagement répondait directement aux besoins exprimés par les usagers.

La décision tenait également compte du volume croissant du trafic aéroportuaire, comme cela avait été reconnu dans la stratégie ministérielle de 1989 et confirmé par l'étude de 1990. Les mesures prises tenaient compte de la réalité, soit que le marché avait désigné l'aéroport Pearson comme plaque tournante pour l'Est du Canada. Le réaménagement de l'aéroport s'imposait donc afin de lui permettre de jouer son rôle, soit de faire concurrence aux autres carrefours aéroportuaires de l'Amérique du Nord. Refuser de réaménager aurait donc eu finalement des conséquences beaucoup plus graves que les inconvénients, les

⁶⁴ Voir *Délibérations*, 20:8.

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problèmes de sécurité et les inefficacités dont devaient s'accommoder les usagers. Cela aurait eu une profonde incidence sur la compétitivité de la région.

ii) Si oui, comment s'y prendre?

Une fois reconnue la nécessité de réaménager les aéroports à Pearson, le gouvernement devait décider comment financer les travaux. En 1990, Transports Canada était soumis à d'importantes compressions budgétaires découlant des mesures prises par le gouvernement pour réduire le déficit; selon l'actuel sous-ministre, nombre de projets essentiels avaient déjà été reportés ou réduits. Au même moment, comme nous l'avons vu, le vérificateur général en arrivait à un triste constat concernant l'absence de plan global au Ministère pour financer le réaménagement des infrastructures aux aéroports. Il était donc inévitable que le réaménagement d'aéroports subisse les répercussions des compressions appliquées à l'ensemble du Ministère et du gouvernement.

Comme nous l'avons vu, le cadre stratégique innovateur élaboré à la fin des années 80 pour la gestion des aéroports offrait une solution possible au dilemme Pearson : la participation accrue du secteur privé à des activités tant traditionnelles qu'innovatrices, conformément aux indications de la politique. En outre, l'aéroport Pearson était déjà le lieu d'un essai qui s'appliquait bien à la situation : la construction de l'aéroport 3 par une entreprise du secteur privé. De la symbiose entre l'orientation de la politique et le précédent établi est issue tout naturellement la possibilité de conclure une entente avec le secteur privé en vue du réaménagement des aéroports 1 et 2.

Non seulement la participation du secteur privé constituait une solution évidente au dilemme financier du gouvernement, mais en outre elle permettait de régler l'épineux problème de l'ampleur des travaux de réaménagement à effectuer immédiatement. En effet, un consortium qui entreprend la modernisation d'aéroports est soumis aux forces du marché, et constitue donc par définition le mécanisme parfait pour garantir l'adaptabilité au marché recherchée par la politique de 1987. Dans le cas des aéroports de Pearson, on pouvait être sûr que le consortium n'effectuerait que les travaux nécessaires pour répondre aux besoins des usagers et parviendrait à les financer à partir des recettes générées par un plus grand nombre de voyageurs. La nature et l'ampleur des travaux de réaménagement seraient dictées par les forces du marché, et non par des planificateurs à Ottawa.

L'autre solution possible, outre la participation du secteur privé, qui permettait de s'adapter aux mouvements du marché était la création d'une administration aéroportuaire locale, telle qu'envisagée dans la politique de 1987. Cependant en 1990, comme nous l'avons vu, cette solution était tout à fait hypothétique puisqu'on n'en était qu'à l'étape préliminaire du projet. Il importe également de souligner que le Ministre avait à décider seulement s'il devait annoncer son intention de faire appel au secteur privé pour effectuer le

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réaménagement. L'annonce n'empêchait pas la participation d'une éventuelle administration aéroportuaire locale.

L'urgence des travaux de réaménagement ne faisait aucun doute pour les nombreux usagers et autres intéressés qui ont signalé la chose au Ministre. Nous croyons qu'il aurait été irresponsable de s'abstenir d'agir sous prétexte que des municipalités de Toronto montraient les premiers signes d'une volonté de former une administration aéroportuaire locale.

En fait, un refus d'agir en 1990 aurait exposé le Ministre à l'accusation, entièrement justifiée à notre avis, que les préférences des décideurs d'Ottawa avaient plus de poids dans les décisions du gouvernement que les besoins réels de la région torontoise. En outre, choisir délibérément de ne pas agir en 1990 aurait été contraire à l'esprit de la politique de 1987, qui visait précisément à libérer les aéroports de l'esclavage d'une gestion publique centralisée et à leur permettre de répondre aux besoins locaux et aux exigences des voyageurs.

Je dois avouer, monsieur, que j'ai vu au fil des années beaucoup de lobbyistes être grassement payés pour n'exercer en fin de compte aucune influence sur la façon dont les projets sont élaborés, négociés et décidés.

Glen Shortliffe
Ancien greffier du Conseil privé

Après que le Cabinet eut décidé de solliciter des propositions pour le réaménagement des aéroports 1 et 2, des fonctionnaires du ministère des Transports ont été chargés du projet. Leur tâche consistait à préparer une demande de propositions énonçant en détail les exigences du gouvernement et guidant les promoteurs dans la préparation de leurs propositions finales.

Dans l'exécution de cette tâche, les fonctionnaires ont fait appel à des spécialistes des Transports et d'autres ministères et s'en sont remis à des consultants pour une grande partie des travaux détaillés. Ils ont également demandé conseil au ministre quand des problèmes importants se sont posés et ils ont consulté les promoteurs et d'autres intéressés pour faire en sorte que les propositions éventuelles satisfassent aux exigences⁶⁵.

1. Méthodes courantes

Le processus d'élaboration de la demande de propositions devait se conformer à certaines grandes lignes directrices gouvernementales. Selon M. Al Clayton, directeur exécutif du Bureau des biens immobiliers et du matériel au Conseil du Trésor, un projet comportant la location à long terme de terrains et d'immeubles fédéraux est normalement assujéti à des principes généraux du Conseil du Trésor ainsi qu'à des procédures et à des politiques ministérielles bien précises⁶⁶.

M. Clayton a fait remarquer que les partenariats entre le secteur public et le secteur privé ne datent pas d'hier et qu'ils ont même joué un rôle important dans le développement de notre pays. Il a cité l'exemple de la Compagnie de la baie d'Hudson et des sociétés qui ont

⁶⁵ Voir *Délibérations*, 3:43.

⁶⁶ Voir *Délibérations*, 3:5,7.

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construit les chemins de fer. Les partenariats ont toujours été d'un usage courant et, ces dernières années, ils le sont devenus de plus en plus tant au Canada qu'à l'étranger, à mesure que les gouvernements sont amenés à redéfinir leur rôle en raison de la diminution des ressources⁶⁷.

Depuis 1992, les appels d'offres pour la location à long terme de terres fédérales sont régis par une politique générale établie par le Conseil du Trésor en vertu de la *Loi sur les immeubles fédéraux*, adoptée en 1992. Dans l'examen des arrangements proposés par les ministères, le Conseil du Trésor veille au respect de quatre principes : 1) un rendement raisonnable pour l'État par rapport à la valeur marchande; 2) la possibilité juste et équitable, pour les entreprises du secteur privé, de soumissionner en disposant d'un délai raisonnable pour faire une offre; 3) l'acceptation, par le gouvernement, de l'offre la plus avantageuse, c'est-à-dire qui présente la «meilleure valeur», en fonction d'un processus d'évaluation préalablement établi qui ne tient pas compte uniquement du rendement; 4) la durée des baux, qui doit être la plus courte que permette le financement⁶⁸.

D'après M. Clayton, on a tenté de préciser certains des principes élaborés par le Conseil du Trésor. Cependant, le fait que le bail foncier ne soit pas tellement utilisé sur le marché immobilier nord-américain ne facilitait pas la détermination d'une durée appropriée pour la location de terres fédérales. On nous a signalé que la Commission de la capitale nationale applique une règle selon laquelle la durée est le double de la durée d'une hypothèque normale, plus quelques années. Un bail aussi long donne aux prêteurs une garantie suffisante pour qu'ils soient disposés à accorder des prêts à des taux intéressants ce qui, en retour, permet au promoteur de maximiser le rendement pour le gouvernement. Dans le cas d'un projet comme celui du réaménagement d'une aérogare, selon M. Clayton, un bail d'une durée de 60 à 70 ans serait approprié⁶⁹.

Une des clauses courantes des baux à long terme interdit au gouvernement de s'opposer de façon injustifiée à la cession de propriété ou de capitaux entre des parties du secteur privé. Elle prévoit également que le gouvernement doit accepter le changement de propriété tout en reconnaissant que l'on ne peut exclure de tels changements étant donné la durée du bail⁷⁰.

Au cours de l'établissement d'un bail pour la location de terres fédérales, le ministère intéressé doit s'adresser au Conseil du Trésor et obtenir, à des moments précis, l'approbation

⁶⁷ Voir *Délibérations*, 3:5,6.

⁶⁸ Voir *Délibérations*, 3:6.

⁶⁹ Voir *Délibérations*, 3:10.

⁷⁰ Voir *Délibérations*, 8:12.

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des ministres qui font partie du Conseil. À tout le moins, des présentations doivent être faites avant la publication de la demande de propositions, après le choix d'une proposition ou d'un soumissionnaire et après l'élaboration d'un accord détaillé. De plus, le Conseil du Trésor peut, s'il le juge utile, poser d'autres exigences selon la nature du projet⁷¹.

Pour obtenir l'approbation préliminaire du projet, qui doit précéder la publication de la demande de propositions, il faut fournir une justification à la fois du projet comme tel et des solutions de rechange éventuelles. À ce stade, par exemple, on évalue les avantages relatifs de l'appel d'offres, qui énonce les exigences précises auxquelles les soumissionnaires doivent répondre, et de la demande de propositions, qui fixe les objectifs et invite les soumissionnaires à présenter des solutions novatrices. C'est également à ce moment-là qu'on discute du processus d'évaluation.

Pour pouvoir répondre aux préoccupations du Conseil du Trésor avant les étapes de présentation et bien cerner les incidences qu'un grand projet de l'État peut avoir sur d'autres ministères, il faut qu'il y ait beaucoup d'échanges entre le ministère responsable et les autres tout au long de l'élaboration du projet.

Outre les contacts bilatéraux qu'implique l'examen du Conseil du Trésor, un comité interministériel est normalement établi pour faciliter les échanges et l'examen. Dans le cas qui nous occupe, un comité interministériel composé principalement de représentants du Conseil du Trésor, des Finances et du Bureau du Conseil privé a été constitué. Selon M^{me} Labelle, qui était alors sous-ministre des Transports, la participation de plusieurs ministères au projet a été importante, comme on pouvait s'y attendre pour un projet aussi important et innovateur que le réaménagement des aéroports 1 et 2⁷².

2. Au Ministère

Selon John Desmarais, qui relevait du directeur général responsable de l'élaboration de la demande de propositions, à Ottawa, un petit comité directeur a été formé à l'été 1990 en prévision de l'annonce par le ministre qu'un appel d'offres serait lancé auprès des promoteurs du secteur privé⁷³. Dirigé par Victor Barbeau, sous-ministre adjoint, ce comité se composait de responsables de l'aéroport Pearson, qui devaient s'occuper surtout des questions de détail, du gestionnaire général des grands projets de l'État (également en poste à Toronto) et de fonctionnaires, à Ottawa, qui devaient fournir appui et conseils au nom du Ministère.

⁷¹ Voir *Délibérations*, 3:7.

⁷² Voir *Délibérations*, 8:12.

⁷³ Voir *Délibérations*, 11:87.

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Le comité directeur devait d'abord préparer les documents d'approbation requis, déterminer les questions de fond et de procédure qu'il faudrait régler au départ et mener les études nécessaires⁷⁴. Par ailleurs, un petit groupe de travail a examiné la façon dont les choses s'étaient passées dans le cas de l'aérogare 3 et a préparé un plan de travail global⁷⁵.

La sous-ministre, Huguette Labelle, et des fonctionnaires étroitement associés au projet nous ont dit que le dossier de la demande de propositions n'avait pas, à l'automne 1990 et dans les premiers mois de 1991, un caractère urgent étant donné que l'aménagement des aérogares devait coïncider avec d'autres travaux à l'aéroport Pearson⁷⁶. En effet, à l'automne 1990, le Cabinet avait décidé de procéder à l'évaluation des incidences environnementales d'un projet de nouvelles pistes et d'obtenir l'autorisation de construire ces pistes avant de faire réaménager les aérogares.

Outre la préparation des documents liés à la demande de propositions et des études connexes, l'équipe chargée du projet a demandé, en février 1991, à la firme Price Waterhouse de la conseiller tout au long de la préparation de la demande de propositions et de rédiger les premiers projets de la demande elle-même⁷⁷. En outre, vers la même époque, le ministre a retenu les services de la firme Coopers Lybrand pour vérifier la régularité du processus d'appel de propositions⁷⁸.

Au cours de cette période, on a réuni à l'intention des proposants éventuels des documents de nature technique, tels que des dessins et des rapports techniques, un répertoire complet des baux et des contrats à signer, la liste des groupes d'employés de Transports Canada qui seraient transférés. Dans les cas indécis, on a ébauché des documents de rechange pour que l'équipe du projet puisse s'aligner rapidement sur les décisions qui seraient prises. Par exemple, en mai 1991, on a rédigé un projet de déclaration d'intérêts, ce qui prouve que la décision d'opter pour un processus en une seule étape ne comportant qu'un appel de propositions n'avait pas encore été prise.

Au départ, on s'attendait à ce que les résultats de l'évaluation environnementale soient disponibles en quelques mois, mais cela n'a pas été le cas. Comme l'a dit M^{me} Labelle, «les dates ont été changées à quelques reprises»⁷⁹. L'évaluation a été retardée par la nécessité

⁷⁴ Voir *Délibérations*, 11:88 et 6:7.

⁷⁵ Voir *Délibérations*, 6:26.

⁷⁶ Voir *Délibérations*, 8:20.

⁷⁷ Voir *Délibérations*, 6:3.

⁷⁸ Voir *Délibérations*, 16:47.

⁷⁹ Voir *Délibérations*, 8:20.

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d'obtenir un complément d'information, la décision de ne pas tenir d'audiences publiques pendant l'été et des élections municipales⁸⁰.

Devant la lenteur imprévue du processus d'évaluation environnementale, à l'été 1991 le ministre des Transports, Jean Corbeil, a obtenu l'accord du Cabinet pour dissocier le projet de réaménagement des aérogares du projet de construction de pistes et les faire avancer individuellement. Selon M. Corbeil, comme l'objectif du projet n'était pas d'agrandir les aérogares mais de les réaménager et de les moderniser, le projet n'était pas vraiment lié à la question des pistes⁸¹. M^{me} Labelle, qui était sous-ministre à l'époque, a ajouté qu'il y avait, dans la demande de propositions, une option pour protéger le gouvernement si jamais une décision négative du comité d'évaluation environnementale empêchait le projet de construction de pistes d'aller de l'avant.

À l'étape de la formulation de la demande de propositions, plusieurs questions de fond se sont posées, et dont le ministre a été saisi. M. Berigan nous les a énumérées⁸². Il s'agissait de définir les limites de la participation du promoteur à l'exploitation de l'aéroport; de déterminer le nombre ou la capacité des pistes et d'établir le niveau d'investissement requis; de décider du sort des employés; de décider si un promoteur de l'aérogare 3 ou des intérêts étrangers seraient admissibles, et définir les critères d'évaluation des propositions. Comme il a déjà été dit, le processus d'évaluation environnementale devait s'imbriquer dans le projet de réaménagement des aérogares, ce à quoi on s'est employé après l'annonce de 1990.

D'après les témoignages entendus, les promoteurs ont tenté, durant l'élaboration de la demande de propositions, de faire valoir leur point de vue sur ce qui devrait être fait, comment et quand (pour plus de détails, se reporter à la section sur les promoteurs et leurs lobbyistes)⁸³. Il ressort très clairement des commentaires du ministre et des fonctionnaires que l'on savait à quoi s'en tenir quant au but de ces démarches : les promoteurs voulaient s'assurer que les arguments d'intérêt public qui serviraient également leurs propres intérêts soient bien entendus par le gouvernement. Le ministre et les fonctionnaires ont profité de ces contacts pour obtenir de l'information et des idées sur les options possibles, mais en sachant qu'il revenait aux représentants officiels, et à eux seuls, de déterminer les exigences de la demande de propositions de manière à servir l'intérêt public. Ainsi, M^{me} Labelle, nous a expliqué comment elle avait agi à titre de sous-ministre des Transports durant cette période :

⁸⁰ Voir *Délibérations*, 8:24.

⁸¹ Voir *Délibérations*, 21:17-18.

⁸² Voir *Délibérations*, 6:27.

⁸³ Voir *Délibérations*, 3:93 et 6:26.

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«[...] j'acceptais certainement leurs appels téléphoniques, je les recevais, je les écoutais [...]. Et, au bout du compte, ils n'avaient aucune influence sur les avis ou conseils que je donnais à mes ministres, quels qu'ils soient.»⁸⁴

Le ministre Corbeil nous a indiqué que c'est habituellement en collaboration avec ses collègues immédiats, la ministre d'État aux Transports, Shirley Martin, la sous-ministre Huguette Labelle et d'autres responsables de Transports Canada, qu'étaient définies au fur et à mesure les options qui s'offraient à eux relativement à la demande de propositions, et qu'ils en arrivaient à une position commune par voie de consensus⁸⁵. S'il n'a pas dit clairement qu'il comptait beaucoup sur la contribution de ses collaborateurs en raison de la nature technique de bon nombre des questions soulevées dans ce dossier, les points énumérés ci-dessus nous permettent de le supposer. En plus d'avoir donné un aperçu général du processus décisionnel lié à la préparation de la demande de propositions, M. Corbeil a fait des commentaires précis sur plusieurs questions.

A) Structure du processus d'appel de propositions

Très tôt, on s'est demandé s'il fallait reprendre le processus en deux étapes suivi pour l'aérogare 3, auquel cas il faudrait demander aux promoteurs de faire une déclaration d'intérêt, ce qui permettrait d'identifier les concurrents, de faire un certain tri et d'inviter ces candidats à répondre à une demande de propositions détaillée. L'autre solution (en supposant qu'il y ait un processus concurrentiel) était de recourir à un processus en une étape où les promoteurs ne répondraient qu'à une demande de propositions détaillée.

Le ministre estimait qu'il n'était pas nécessaire, dans ce cas-ci, de «tâter le terrain» pour voir s'il y avait des intéressés. On le voyait au seul nombre de propositions spontanées reçues par le Ministère; plusieurs propositions étaient antérieures à l'annonce faite par le ministre Lewis, en octobre 1990, ce qui indiquait qu'après ce qui s'était passé pour l'aérogare 3, les promoteurs avaient bien compris le message⁸⁶.

Les fonctionnaires étaient eux aussi de cet avis. Selon M. Power, qui avait été associé aux projets de l'aérogare 3 et des aérogares 1 et 2, on utilise la déclaration d'intérêt (comme dans le cas de l'aérogare 3) lorsqu'on n'est pas sûr de l'intérêt du secteur privé et qu'on veut savoir s'il y a lieu de le faire participer⁸⁷. Cependant, rien ne permettait de déterminer qu'une

⁸⁴ Voir *Délibérations*, 8:65.

⁸⁵ Voir *Délibérations*, 21:7 et 21:20.

⁸⁶ Voir *Délibérations*, 21:15-16.

⁸⁷ Voir *Délibérations*, 6:10 et 8:23.

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façon de procéder aurait été plus «normale» que l'autre pour un projet comme celui des aérogares 1 et 2⁸⁸. Selon la sous-ministre à l'époque, on cherchait autant que possible à éviter le processus en deux étapes, qui comportait des coûts supplémentaires⁸⁹.

B) Quel réaménagement?

Il a vite fallu décider si la demande de propositions devait viser le réaménagement de l'aérogare 1 seulement, de l'aérogare 2 seulement ou des deux. On devait aussi déterminer les limites de la propriété à offrir en location et décider dans quelle mesure il faudrait inclure la partie centrale de l'aéroport.

Le ministre Corbeil a dit être conscient, tout comme ses collaborateurs, que la concentration des opérations dans l'aérogare 2 avait ses partisans, entre autres les syndicats, Air Canada et le propriétaire de l'aérogare 3 (Claridge). Le ministre craignait cependant que la fermeture de l'aérogare 1 ne signifie la perte instantanée de 24 portes, ce qui aurait pu nuire au bon fonctionnement de tout l'aéroport. Ainsi, la demande de propositions précisait que l'aérogare 1 devait rester ouverte, à court terme, mais invitait les proposants qui avaient des idées novatrices permettant de la fermeture de l'aérogare 1 à les présenter⁹⁰.

C) Délai de présentation des propositions

Si la date limite de la présentation des propositions a été fixée au 19 juin 1992, soit 93 jours après la diffusion, le 19 mars, de la trousse d'information à l'intention des proposants, c'était également là une demande du ministre en poste à l'époque. M. Jean Corbeil nous a dit qu'un tel délai était normal, à son avis, pour des projets de ce genre et que le groupe Canadian Airports, dans une proposition spontanée, avait indiqué qu'un délai de 60 jours pour la présentation des propositions lui convenait⁹¹. Afin d'éviter d'éliminer ainsi des concurrents, on a avisé le public et les parties intéressées que l'on examinerait les demandes de prolongation de délai⁹². À propos du délai de 90 jours, M. Berigan a précisé qu'on savait, au gouvernement, que le projet était connu du public depuis l'annonce initiale en octobre 1990 et que les proposants sérieux préparaient déjà leur proposition⁹³.

⁸⁸ Voir *Délibérations*, 3:96.

⁸⁹ Voir *Délibérations*, 8:23.

⁹⁰ Voir *Délibérations*, 21:18.

⁹¹ Voir *Délibérations*, 21:34-35.

⁹² Voir *Délibérations*, 21:18.

⁹³ Voir *Délibérations*, 6:9.

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Certains fonctionnaires du Ministère semblent avoir eu l'impression que Price Waterhouse, qui a agi à titre de consultant pour l'ensemble du processus lié à la demande de propositions, avait des réserves au sujet du délai de 90 jours. Ainsi, d'après une note du Ministère, la firme estimait qu'un délai de 90 jours donnerait l'impression que le gouvernement ne s'est pas engagé à établir un processus pleinement ouvert et compétitif⁹⁴.

M. John Simke, qui a dirigé l'équipe Price Waterhouse pendant l'élaboration de la demande, nous a toutefois dit que sa firme avait signalé aux fonctionnaires qu'une période de 90 jours pour la présentation des soumissions, bien qu'acceptable, était un peu courte étant donné l'envergure et la complexité du projet. M. Simke a ajouté que le choix d'un délai pour la présentation de propositions était surtout une question de jugement et qu'il n'y avait pas de règle permettant de recommander un délai de 60 jours plutôt que 90 ou 120, ou 120 plutôt que 60 ou 90.⁹⁵

Les fonctionnaires étaient pour leur part peu enclins à donner leur avis sur une question qui relevait d'une décision politique. M. Ran Quail, qui a mené les négociations avec le proposant retenu pendant plusieurs mois avant d'être nommé sous-ministre des Travaux publics et Services gouvernementaux, a toutefois reconnu que le délai de 90 jours était serré⁹⁶.

D) Critères d'évaluation

L'établissement des critères d'évaluation s'est fait quelque peu à part des autres éléments de la demande de propositions. Selon Victor Barbeau, M. Ron Lane, alors directeur régional des aéroports pour le Canada atlantique, a été choisi pour diriger le comité chargé du processus d'évaluation expressément parce qu'il n'était pas lié au dossier de l'aéroport Pearson⁹⁷. M. Lane a expliqué que ses fonctions, en vue de la publication de la demande de propositions, consistaient essentiellement à établir la méthodologie, à constituer un comité d'évaluation, à élaborer des critères d'évaluation et à préparer les documents relatifs à l'évaluation⁹⁸.

Avec la mise en route des travaux en janvier 1992, l'une des premières tâches de M. Lane et de son groupe a été de rédiger le chapitre 7 de la demande de propositions, qui

⁹⁴ Voir *Délibérations*, 6:33.

⁹⁵ Voir *Délibérations*, 15:9.

⁹⁶ Voir *Délibérations*, 15:65.

⁹⁷ Voir *Délibérations*, 2:45.

⁹⁸ Voir *Délibérations*, 6:48.

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explique aux auteurs comment leurs propositions seront évaluées et en fonction de quels critères. La première étape dans l'établissement des critères, selon M. Berigan, comportait un processus de consultation qui a permis d'évaluer l'expérience acquise avec l'aérogare 3. Les principaux éléments ont été examinés lors de consultations interministérielles ou transmis à Price Waterhouse⁹⁹. La demande de propositions ne donne pas d'indicateurs numériques pondérés des critères d'évaluation, mais divise plutôt les critères en trois catégories : «de toute première importance», «d'importance légèrement moindre mais tout de même considérable», «d'importance moindre mais appréciable»¹⁰⁰. Nous en déduisons que la définition des critères et leur pondération ont été arrêtées entre le moment où l'appel de propositions a été lancé et la date limite de présentation des soumissions¹⁰¹.

Comme nous l'avons dit, le ministre a été associé, avec ses collaborateurs, à la définition des facteurs à utiliser pour évaluer les propositions. De même, selon M. Lane, à l'étape de la rédaction de la demande de propositions, on a demandé et obtenu l'approbation du ministre quant à la composition du comité d'évaluation. Par la suite, tous les documents liés à l'évaluation, y compris la pondération accordée aux différents critères, ont été soumis à l'examen du ministre, qui n'a toutefois demandé aucun changement. De fait, il n'y a eu aucune intervention du ministre à ce moment-là, ou à d'autres moments d'ailleurs¹⁰².

E) La salle de documentation

À l'étape de la préparation de la demande propositions, des fonctionnaires ont réuni des documents de consultation à mettre à la disposition des proposants. C'est alors qu'une décision étrange a été prise qui allait avoir de sérieuses conséquences plus tard dans le processus, au moment où se négociaient les modalités des accords. On devait s'apercevoir que c'est ce qui n'était pas dans la salle de documentation, et non ce qui s'y trouvait, qui donnait à cette pièce toute son importance¹⁰³.

On a décidé de ne pas y inclure un document intitulé «*Guiding Principles For Air Canada Lease Negotiations, Terminal II*» et conclu en 1989 entre le Ministère (sous la signature de Glen Shortliffe, sous-ministre) et Air Canada. Ce document prévoyait qu'à l'expiration du bail de location de l'aérogare 2, en 1997, ce bail serait remplacé par un autre s'étendant sur 20 ans et renouvelable pour deux périodes additionnelles de 10 ans. Il

⁹⁹ Voir *Délibérations*, 6:35.

¹⁰⁰ *Demande de propositions*, p. 50.

¹⁰¹ Voir *Délibérations*, 6:58.

¹⁰² Voir *Délibérations*, 6:52.

¹⁰³ Voir Chapitre V.

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renfermait également plusieurs autres dispositions, dont une grille pour déterminer les taux de location d'Air Canada et la transférabilité de l'accord si Transports Canada devait vendre ou céder l'aérogare 2.

Selon M. Berigan, les fonctionnaires du Ministère croyaient que l'appui d'Air Canada à la proposition spontanée de Paxport signifiait qu'elle avait cessé d'adhérer aux «principes directeurs». Dans leurs consultations avec Air Canada au sujet du contenu de la demande de propositions, ils n'ont reçu aucune indication quant à l'inclusion des principes directeurs. Air Canada a plutôt ratifié ce qui allait devenir le libellé de la demande de propositions, qui exige que les proposants reconnaissent les investissements qu'Air Canada a faits à l'aérogare, qu'ils prévoient une indemnité appropriée et qu'ils reconnaissent qu'Air Canada a un bail jusqu'en 1997. Les fonctionnaires ont donc agi comme si le document des «principes directeurs» n'avait aucun effet de droit, même s'ils ont dit être au courant d'une lettre de 1991 à M^{me} Labelle, alors sous-ministre, réitérant l'adhésion d'Air Canada à l'entente de 1989¹⁰⁴.

3. À l'extérieur du ministère

Au cours de l'élaboration de la demande de propositions, les membres de l'équipe de travail et ceux qui les conseillaient ont eu des contacts avec les diverses parties intéressées, parfois à l'initiative des fonctionnaires, parfois en réponse à des demandes.

A) Administrations aéroportuaires locales

L'annonce que le gouvernement comptait solliciter des propositions de la part de promoteurs pour le réaménagement des aérogares 1 et 2 a suscité, comme il fallait s'y attendre, des critiques de la part de ceux qui tentaient d'établir une administration aéroportuaire locale à Toronto. En décembre 1990, à une réunion avec le Ministre, les représentants de cinq conseils régionaux associés à l'établissement de l'administration aéroportuaire du Grand Toronto ont de nouveau demandé que le gouvernement fédéral attende que cette administration soit mise sur pied. Le ministre Lewis leur a répondu que le réaménagement des aérogares était hautement prioritaire et ne pouvait être retardé. Selon M. Gary Harrema, président du conseil régional de Durham, qui assistait à la réunion, le Ministre avait entendu dire qu'il n'y avait pas consensus au sein des divers conseils municipaux et qu'il était nécessaire que chacun d'eux signifie son accord en adoptant officiellement une résolution en ce sens¹⁰⁵.

¹⁰⁴ Voir *Délibérations*, 6:44.

¹⁰⁵ Voir *Délibérations*, 5:15-16-17.

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Les dirigeants locaux qui souhaitaient établir une administration aéroportuaire locale pour Pearson n'ont cependant pas tous eu la même perception de la position du ministre. D'après Gardner Church, sous-ministre de l'Ontario responsable du Grand Toronto, il est ressorti bien clairement de la réunion de décembre 1990 que le gouvernement fédéral ne reconnaîtrait pas une administration aéroportuaire locale à Toronto avant que les aérogares 1 et 2 n'aient été louées à des promoteurs. Par contre, M. Gerry Meinzer, ancien président de la chambre de commerce du Grand Toronto, croyait que le ministre Lewis avait affirmé qu'il serait le premier à reconnaître une telle administration dès que les municipalités locales et régionales auraient donné leur accord¹⁰⁶.

D'après les souvenirs du ministre Lewis, et qui sont étayés par une note interne de son Ministère résumant la rencontre du 7 décembre 1990, il a été dit clairement que la porte restait ouverte à la reconnaissance d'une administration aéroportuaire locale. Toujours selon cette note, l'idée de reconnaître une administration aéroportuaire locale n'avait pas été rejetée, et le ministre s'était dit prêt à examiner des propositions, tout en indiquant son refus de retarder la diffusion de la demande de propositions. On demandait également aux représentants de la région du Grand Toronto (RGT) de contribuer à l'élaboration de la demande de propositions¹⁰⁷.

Nous n'avons eu aucune indication qu'une contribution effective ait eu lieu. De fait, selon M. Church, les communications ont été très rares après que le ministre Lewis eut sollicité une telle contribution. M. Church nous a informés que c'est par une communication clandestine que le comité organisateur local a ensuite eu vent des projets du gouvernement : un employé mécontent de Transports Canada annonçait qu'une demande de propositions allait bientôt sortir. C'était un an et demi plus tard¹⁰⁸.

Il semble que cette nouvelle ait donné lieu à une activité fébrile dans la région. En février 1992, des représentants de la RGT ont convoqué une réunion où, au dire du ministre Corbeil, ils ont donné l'impression qu'ils venaient tout juste de prendre connaissance de la politique fédérale concernant les administrations aéroportuaires locales et exigé, de fait, le report indéfini du projet de réaménagement des aérogares. À cette réunion, les fonctionnaires fédéraux ont été informés de la tentative du gouvernement provincial de parrainer la formation d'une administration aéroportuaire locale qui, de l'aveu de M. Corbeil, s'écarterait

¹⁰⁶ Voir *Délibérations*, 5:39.

¹⁰⁷ Voir *Délibérations*, 4:16.

¹⁰⁸ Voir *Délibérations*, 5:17.

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grandement des principes de base énoncés dans la politique fédérale. Ainsi, il ne s'agissait pas de former un groupe privé, mais de fournir au gouvernement de l'Ontario un moyen de participer aux bénéfices tirés de l'exploitation de l'aéroport¹⁰⁹.

Selon les représentants de la RGT, la réunion n'a pas permis de régler les principaux différends avec le gouvernement fédéral. Un des ministres fédéraux présents, l'honorable Michael Wilson, a toutefois indiqué que, si une administration aéroportuaire pouvait se constituer, sa soumission serait la bienvenue¹¹⁰. Les représentants de la RGT ont cependant eu l'impression que la présence de politiciens locaux au sein de l'administration aéroportuaire locale, représentait, pour le gouvernement fédéral, un problème insurmontable, et c'est surtout à ce niveau qu'ils percevaient un désaccord à propos des exigences fédérales¹¹¹. Ils nous ont également dit qu'ils ne partageaient pas le sentiment d'urgence du gouvernement fédéral, étant donné que la récession était maintenant bien installée et que la demande baissait à l'aéroport Pearson.

Il semble que la réunion ait eu pour résultat d'amener le gouvernement ontarien à décider de garantir, au besoin, une proposition en vue du réaménagement des aéroports et d'accentuer ses efforts en vue de la formation d'une administration aéroportuaire locale à cette fin. De l'avis des représentants de la RGT, cela a été «la source d'une grande agitation (...) entre le gouvernement fédéral et la province»¹¹².

Selon M. Church et les politiciens locaux, la décision du gouvernement fédéral d'aller de l'avant avec la demande de propositions a eu pour deuxième conséquence de faire s'effriter le consensus naissant entre les municipalités et de faire se manifester au moins deux administrations concurrentes éventuelles. De fait, M. Church a prétendu que le gouvernement fédéral cherchait à empêcher les divers intervenants de la région torontoise de faire front commun, mais sans nous dire comment il s'y prenait¹¹³.

D'après ces mêmes témoins, la ville de Mississauga a alors décidé de se dissocier du Comité des chefs de conseils du Grand Toronto et commencé à préconiser la privatisation avant la constitution d'une administration locale¹¹⁴. Le témoignage de la mairesse de Mississauga, M^{me} Hazel McCallion, donne un son de cloche quelque peu différent. Selon

¹⁰⁹ Voir *Délibérations*, 21:53-54.

¹¹⁰ Voir *Délibérations*, 5:24.

¹¹¹ Voir *Délibérations*, 5:21.

¹¹² Voir *Délibérations*, 5:24.

¹¹³ Voir *Délibérations*, 5:14 et 15:18.

¹¹⁴ Voir *Délibérations*, 5:24.

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M^{me} McCallion, sa priorité à la réunion de février 1992 était d'éviter tout retard dans la rénovation des aérogares 1 et 2, surtout l'aérogare 1, qui nécessitait des réparations immédiates¹¹⁵. Son témoignage laisse supposer également qu'elle s'était opposée dès le départ au projet d'administration aéroportuaire locale lancé en 1992 :

Après que le gouvernement eut annoncé son intention de procéder à une demande de propositions pour les aérogares 1 et 2, l'Ontario s'est dite très intéressée. Même chose de la part de l'ex-président de la chambre de commerce de Toronto, M. Bandeen; et l'on a entrepris, une fois de plus sans consulter la ville de Mississauga, de constituer ce que j'ai appelé une administration aéroportuaire illégale, composée de M. Bandeen, de M. Meinzer et de membres de la chambre de commerce de Toronto¹¹⁶.

Jusqu'à la sortie de la demande de propositions, le gouvernement fédéral a toujours pensé qu'il n'y avait pas d'organisation à Toronto qui satisfaisait aux critères lui permettant d'être reconnue comme administration aéroportuaire locale, et dont il aurait pu demander l'avis¹¹⁷. Selon le ministre Corbeil et les fonctionnaires fédéraux, le principal point de désaccord entre les municipalités tenait au fait que la ville de Mississauga insistait pour que l'aéroport de l'île de Toronto soit placé sous la responsabilité de l'administration aéroportuaire locale. **C'est M. Michael Farquhar, alors chef du groupe de travail de Transports Canada sur les cessions d'aéroports, qui nous a expliqué ce qui inquiétait surtout dans cette tentative de céder plus d'un aéroport à la fois. Cette cession aurait été heureuse dans le cas de l'aéroport de l'île de Toronto, mais pas dans celui de l'aéroport Pearson. On se serait retrouvé dans une situation ridicule avec une administration aéroportuaire locale constituée essentiellement pour assumer la gestion de l'aéroport Pearson, mais capable de gérer seulement celui de l'île de Toronto¹¹⁸. La position de la ville de Mississauga posait également des problèmes d'ordre pratique étant donné que le gouvernement fédéral n'était qu'un des trois propriétaires de l'aéroport de l'île de Toronto, avec la ville de Toronto et la Commission portuaire de Toronto¹¹⁹.**

Les affirmations des fonctionnaires fédéraux voulant qu'il y ait eu mésentente profonde entre les représentants locaux de la région de Toronto au sujet de l'établissement

¹¹⁵ Voir *Délibérations*, 20:8.

¹¹⁶ Voir *Délibérations*, 20:7.

¹¹⁷ Voir *Délibérations*, 21:54 et 8:27.

¹¹⁸ Voir *Délibérations*, 5:71.

¹¹⁹ Voir *Délibérations*, 20:9.

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d'une administration aéroportuaire locale sont confirmées par les propos de la mairesse de Mississauga concernant le projet d'administration aéroportuaire de 1992 et sa position à l'époque, face à la prise en charge de l'aéroport de l'île de Toronto. Selon M^{me} McCallion, l'appui de la ville de Mississauga à l'égard d'une administration aéroportuaire locale est demeuré subordonné à cette prise en charge jusqu'en 1994. La ville a retiré cette condition quand il est devenu évident que Toronto ne l'accepterait pas¹²⁰.

B) Air Canada

Lors de l'élaboration de la demande de propositions, Air Canada a eu d'importants contacts directs avec Transports Canada et avec les promoteurs. En outre, son influence au sein de l'Association canadienne du transport aérien était manifeste dans certaines interventions de cette association dans le dossier du réaménagement des aéroports de l'aéroport Pearson.

À mesure que se précisait le processus d'élaboration de la demande de propositions, la position d'Air Canada quant à la nécessité de réaménager les aéroports, et quant à l'envergure de ces travaux, s'est modifiée de façon notable. Selon M. Dominic Fiore, directeur principal des affaires immobilières de la société à cette époque, c'est en 1990 que la récession a frappé l'industrie du transport aérien comme un raz-de-marée¹²¹. Air Canada a réagi en mettant sur pied un vaste programme de réduction des dépenses et de compression des effectifs, qui prévoyait notamment le report de la phase 2 de son programme de réaménagement de l'aéroport 2 jusqu'au redressement de sa situation financière, de même qu'une réduction de l'ampleur des plans.

Quand, en octobre 1990, on a annoncé qu'une demande de propositions serait adressée à des promoteurs du secteur privé pour le réaménagement des aéroports 1 et 2, Air Canada venait tout juste, selon M. Fiore, d'entreprendre son effort de compression de ses effectifs. En réponse à la demande reçue du gouvernement, Air Canada lui a fait parvenir, en mars 1991, une lettre dans laquelle elle disait être disposée à fournir de l'information et énumérait une série d'exigences à inclure dans la demande de propositions. Elle disait, par contre, n'être pas convaincue que le transfert de l'aéroport à une tierce partie, qui se chargerait de l'exploitation et de la gestion, était la seule ou la meilleure solution pour en assurer l'avenir¹²².

¹²⁰ Voir *Délibérations*, 20:15.

¹²¹ Voir *Délibérations*, 12:76.

¹²² Pierre Jeannot à Doug Lewis, juillet 1990, LA 000484.

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Toujours en mars 1991, Air Canada a été informée par Transports Canada qu'avec le lancement d'un appel d'offres ouvert, elle devait mettre fin à sa relation avec Paxport, qui avait été marqué par son soutien à la proposition spontanée de Paxport l'année précédente. Air Canada a donc informé Paxport, en avril 1991, qu'elle se retirait de leur coentreprise en vue du réaménagement de l'aérogare 2 et que, pendant toute la durée de l'appel d'offres, elle traiterait tous les promoteurs sur un pied d'égalité et de façon indépendante¹²³.

Interrogés au sujet d'une note de Paxport dans laquelle un représentant d'Air Canada acceptait de maintenir des rapports officieux, les porte-parole d'Air Canada ont affirmé que Paxport n'avait eu aucun lien privilégié avec la société après avril 1991¹²⁴. Cette affirmation est corroborée par Raymond Hession, président de Paxport à cette époque, qui nous a dit que par la suite, Air Canada avait traité avec Paxport de façon strictement indépendante¹²⁵.

Le 12 Juillet 1991, traitant d'une réunion tenue, nous avons obtenu la même réponse à nos questions au sujet d'un document interne de Paxport, dans lequel il est dit que, les représentants d'Air Canada directement responsables de l'aménagement de l'aéroport avaient indiqué leur préférence pour Paxport, si l'aménagement devait être confié au secteur privé, et qu'Air Canada ne traiterait avec aucun autre promoteur¹²⁶. Comme les représentants d'Air Canada qui ont comparu devant nous n'assistaient pas à cette réunion, ils n'ont pas pu nous dire quelle était l'intention de leurs collègues à l'époque¹²⁷. M. Fiore a affirmé pour sa part qu'il n'avait, dans ses rapports avec Paxport, indiqué aucune préférence pour cette société.

Plus tard en 1991, Air Canada a fourni à Transports Canada son plan remanié pour la phase 2 des travaux d'aménagement de l'aérogare 2 (l'essentiel de sa contribution à l'élaboration de la demande de propositions) ainsi que des documents d'appui pour la salle de documentation. S'y trouvait notamment un énoncé des principes applicables aux baux, énoncé qui, selon les représentants d'Air Canada, s'inspirait des principes directeurs de 1989¹²⁸. Il y était question de l'entente sur les loyers, de la protection de l'investissement d'Air Canada dans l'aérogare 2, de l'envergure des travaux d'aménagement et du contrôle sur les opérations¹²⁹.

¹²³ Voir *Délibérations*, 12:91.

¹²⁴ Voir *Délibérations*, 12:92.

¹²⁵ Voir *Délibérations*, 9:29.

¹²⁶ Voir *Délibérations*, 9:33.

¹²⁷ Voir *Délibérations*, 12:95.

¹²⁸ Voir *Délibérations*, 12:101.

¹²⁹ Voir *Délibérations*, 12:100.

C) Association canadienne du transport aérien

La position d'Air Canada face à l'intention déclarée du gouvernement de solliciter des propositions des promoteurs privés pour les aéroports 1 et 2 a été reprise avec emphase par l'Association canadienne du transport aérien, qui est l'association sectorielle des lignes aériennes commerciales. Cette association représente, selon son président de l'époque, M. Gordon Sinclair, des entreprises dont le chiffre d'affaires équivaut à environ 95 p. 100 de celui de l'ensemble des lignes aériennes commerciales au Canada¹³⁰.

D'après M. Sinclair, une lettre envoyée au ministre Corbeil le 6 septembre 1991 indiquait un vaste consensus au sein de l'Association. On y disait que le réaménagement des aéroports 1 et 2 n'avait pas été réclamé par les lignes aériennes et qu'il serait insensé de solliciter des propositions pour le réaménagement et la rénovation d'un aéroport qu'Air Canada venait tout juste de remettre à neuf. On y affirmait également que la récession ferait stagner pendant cinq ans le trafic-passagers à l'aéroport, dont l'agrandissement serait par conséquent injustifié, et qu'il devrait incomber au locataire-clé de déterminer le rythme et l'envergure des travaux d'aménagement. On ajoutait que l'aménagement et l'agrandissement des aéroports par des entreprises privées ne seraient dans l'intérêt ni des compagnies aériennes ni des consommateurs qui devraient en assumer les coûts¹³¹.

Le 12 novembre 1991, l'Association adoptait une résolution qui traduisait essentiellement les mêmes sentiments et qui a été par la suite communiquée au ministre des Transports. Enfin, le 5 mars 1992, M. Sinclair a envoyé une deuxième lettre au ministre, au nom de l'Association. Dans cette lettre, qui était dans le même ton que celle du mois de septembre, M. Sinclair affirmait que la mainmise d'une entreprise du secteur privé sur les aéroports constituerait une injustice grave à l'égard du public voyageur¹³².

M. Sinclair affirme que bien qu'il ait reçu un accusé de réception de ces deux lettres, il lui a fallu attendre jusqu'au mois de mai 1992, soit après la publication de la demande de propositions, pour que le ministre des Transports lui envoie une vraie réponse. D'après le ministre, il fallait procéder aux travaux de planification et d'aménagement à ce moment-là, ce que justifiaient les prévisions de la croissance du trafic-passagers¹³³.

¹³⁰ Voir *Délibérations*, 13:75.

¹³¹ Voir *Délibérations*, 13:76.

¹³² Voir *Délibérations*, 13:79.

¹³³ Voir *Délibérations*, 13:82.

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D) Les promoteurs et leurs lobbyistes

Au cours de l'élaboration de la demande de propositions, les trois consortiums qui avaient l'intention de présenter des propositions se faisaient la lutte pour obtenir l'appui de tierces parties, supposées influentes, et des informations sur les projets et les exigences du gouvernement qui leur donneraient l'avantage. Ils ont également cherché à persuader des politiciens et des dirigeants élus des avantages de certaines modalités d'appel d'offres ou de propositions qu'ils croyaient jouer en leur faveur (ou alors désavantager leurs rivaux).

i) Les aéroports canadiens

Le consortium des aéroports canadiens était formé de la société British Airports Authority PLC, en association avec la Banque Toronto-Dominion, la Cogan Corporation, la société Ellis-Don Ltd., J.J. Barnicke et la Commission du Régime de retraite des fonctionnaires; il avait essentiellement pour but de faciliter l'application au Canada et aux États-Unis de l'expertise britannique en matière d'aménagement des aéroports. Étant donné que le consortium s'est retiré avant la publication de la demande de propositions, nous n'avons pas interrogé ses représentants.

Toutefois, afin d'avoir une vision complète du lobbying qui a entouré les accords de l'aéroport Pearson, nous avons invité M. Fred Doucet à témoigner. À l'étape de l'élaboration des propositions, M. Doucet, à titre de président de la firme de lobbyistes Fred Doucet Consulting International, a agi pour le compte du consortium des aéroports canadiens, ses services ayant à l'origine été retenus en mars 1990 par le promoteur international M. Edwin Cogan.

Selon M. Doucet, son entreprise est demeurée inscrite comme firme de conseillers en relations avec le gouvernement pour le consortium des aéroports canadiens jusqu'en décembre 1992, date à laquelle le gouvernement a annoncé la meilleure proposition globale retenue. Son travail consistait à suivre la situation à l'intérieur de l'appareil gouvernemental et à donner des avis et conseils au consortium sur la façon de se mettre sur les rangs pour l'obtention du contrat de réaménagement des aéroports 1 et 2¹³⁴. Le gros du travail s'est fait avant le mois de décembre 1991, date à laquelle le consortium a mis fin à ses activités au Canada et indiqué, dans une déclaration publique, que la lenteur du processus de demande de propositions l'avait amené à douter de son aboutissement¹³⁵.

¹³⁴ Voir *Délibérations*, 16:55.

¹³⁵ Voir *Délibérations*, 16:56.

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Nous avons appris avec intérêt que le 1^{er} février 1993 Paxport devait signer avec Fred Doucet Consulting International deux contrats qui auraient pris effet une fois conclus les accords concernant les aérogares 1 et 2. Ces contrats portaient sur des services de relations avec le gouvernement relativement à la cession d'aéroports canadiens ailleurs au Canada et sur des travaux liés à des aéroports en dehors du Canada. Ils comportaient des honoraires mensuels de 8 700 et 8 000 dollars sur une période de dix ans (la moitié de ces montants devait aller à un sous-traitant de M. Doucet).

ii) Airport Terminals Development Group (Claridge)

a) Le consortium

Le consortium de l'Airport Terminals Development Group (ATDG ou Claridge) était une coentreprise de Claridge Properties et de LAH, filiale de Lockheed spécialisée dans la gestion des aéroports. Ce consortium a été formé par le consortium qui était le principal propriétaire de l'aérogare 3, au sein duquel Claridge Properties s'était progressivement substituée au promoteur initial, la firme de Huang et Danczkay, pour le remplacer définitivement en avril 1992¹³⁶.

Selon M. Peter Coughlin, président de Claridge Properties Ltd., sa société avait acheté une part de l'aérogare 3 uniquement parce que le gouvernement avait annoncé son intention de privatiser les aérogares 1 et 2, allant ainsi pour la société la possibilité d'obtenir une participation dans l'exploitation des trois aérogares. Cela est resté l'objectif ultime de Claridge.

En 1991 toutefois, Claridge voulait surtout, dans l'immédiat, convaincre le gouvernement de fermer l'aérogare 1 et d'en diriger le trafic vers l'aérogare 3. Cela aurait permis de consolider le trafic-passagers de cet aérogare et présentait un avantage énorme pour Canadien International, dont le loyer aurait baissé par suite de l'augmentation du nombre de locataires¹³⁷. M. Coughlin a cependant reconnu que le «gouvernement a adopté une perspective à beaucoup plus long terme», en pensant avant tout à la nécessité de développer l'aéroport Pearson. Il a ajouté que, compte tenu des besoins d'Air Canada, le gouvernement «avait probablement raison»¹³⁸.

¹³⁶ Voir *Délibérations*, 15:81.

¹³⁷ Voir *Délibérations*, 12:71.

¹³⁸ Voir *Délibérations*, 17:95.

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M. Coughlin a aussi expliqué que, durant cette période, Claridge savait très bien que le gouvernement voulait lancer une demande de propositions : «Nous savions à coup sûr que la demande de propositions serait publiée et nous étions certainement prêts»¹³⁹.

Même si la proposition de Claridge n'a pas été retenue, M. Coughlin s'est dit généralement satisfait des conditions fixées par la demande de propositions. Selon lui, il n'était pas nécessaire d'adopter un processus à deux étapes, comme cela avait été le cas pour l'aérogare 3, et le délai de 90 jours était raisonnable, surtout qu'une prolongation pouvait être obtenue au besoin¹⁴⁰. M. Coughlin s'est réjoui de ce que le gouvernement, dans la demande de propositions, ait invité les promoteurs à faire preuve de créativité et d'innovation plutôt que de leur imposer des exigences détaillées.

b) Ses lobbyistes

Nous avons appris de M. Harry Near, d'Earnscliffe Strategy Group, que ce groupe travaillait pour le compte de Claridge, moyennant des honoraires de 5 000 \$ par mois; il était chargé de faire des démarches auprès du gouvernement (un second contrat de 4 000 \$ par mois portait sur des conseils en communications), à l'époque où Claridge a remplacé Huang et Danczky, pour qui Earnscliffe travaillait depuis mai 1989¹⁴¹.

Selon M. Near, les services du groupe Earnscliffe consistaient principalement, à l'époque de l'élaboration de la demande de propositions et surtout au printemps de 1992, à suivre la situation au sein de l'appareil gouvernemental et à donner son avis sur la forme que prendrait la demande de propositions et sur le processus qui suivrait¹⁴².

Lorsqu'il est devenu évident que la formule de la demande de propositions avait été retenue, Earnscliffe s'est également appliqué à convaincre le gouvernement d'évaluer les proposants selon leur capacité financière de réaménager et d'exploiter les aérogares et non seulement en fonction des critères opérationnels¹⁴³.

¹³⁹ Voir *Délibérations*, 17:72.

¹⁴⁰ Voir *Délibérations*, 17:74.

¹⁴¹ Voir *Délibérations*, 15:85.

¹⁴² Voir *Délibérations*, 15:82.

¹⁴³ Voir *Délibérations*, 15:82.

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Nous avons par ailleurs appris de M. Near que, jusqu'à l'annonce de la meilleure proposition globale, la rivalité avait été extrêmement forte entre Claridge et Paxport, qui cherchaient, pour ainsi dire, «à s'entre-tuer»¹⁴⁴.

Nous avons aussi entendu le représentant d'une autre firme dont Claridge avait retenu les services, le Capital Hill Group. M. Herb Metcalfe, un des associés principaux, nous a signalé que le groupe avait commencé à travailler au dossier de l'aéroport Pearson en août 1991, moyennant des honoraires de 10 000 \$ par mois¹⁴⁵, contrat qui était toujours en vigueur au moment de nos audiences.

M. Metcalfe a expliqué qu'à l'étape de l'élaboration de la demande de propositions, le groupe avait entrepris de suivre l'évolution de la situation au sein de l'appareil gouvernemental afin d'aider Claridge à préparer sa proposition¹⁴⁶. En outre, au début de cette période, une proposition spontanée ayant été soumise au gouvernement, le groupe a alors tenté de rallier des appuis autour de cette proposition afin de convaincre le gouvernement de fermer l'aérogare 1 et d'en transférer le trafic à l'aérogare 3¹⁴⁷.

iii) Paxport

a) Le consortium

Au moment où la demande de propositions a été lancée, le consortium Paxport avait bien changé depuis sa création, en coentreprise, par le Matthews Group et Bramalea Inc. en 1989. Il regroupait désormais huit entreprises : le Matthews Group, qui détenait 35 p. 100 des parts, Allders International, CIBC Wood Gundy Capital Inc., Ellis-Don Inc., Bracknell Corp., Agra Industries Ltd., NORR Partnership Ltd. et Sunquest Vacations Ltd.

Lors de l'élaboration de la demande de propositions, le président de Paxport, Raymond Hession, a fait plusieurs démarches auprès des fonctionnaires au sujet tant du processus que de la teneur de la demande de propositions.

Dès le départ, la structure du processus et les avantages d'un processus à une étape par rapport au processus à deux étapes qui avait été utilisé pour l'aérogare 3 ont suscité beaucoup d'intérêt. Le 15 avril 1991, au cours d'une réunion avec des fonctionnaires du ministère, M. Hession, parlant au nom de Paxport, a préconisé un processus à une étape.

¹⁴⁴ Voir *Délibérations*, 15:100.

¹⁴⁵ Voir *Délibérations*, 15:116.

¹⁴⁶ Voir *Délibérations*, 15:121.

¹⁴⁷ Voir *Délibérations*, 15:130.

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Selon lui, une demande de déclaration d'intérêt serait inutile et coûteuse puisque trois soumissionnaires possibles - ce qui était suffisant pour une saine concurrence - étaient déjà connus¹⁴⁸.

À cette réunion, M. Hession avait également recommandé de procéder à l'appel de propositions par «définition du contrat», les proposants définissant les modalités du contrat en collaboration étroite avec le gouvernement. Le gouvernement a parfois recours à cette formule lorsque le nombre de fournisseurs de biens ou de services est très limité et qu'il est avantageux, pour lui et pour les entreprises, de travailler ensemble pour créer de nouvelles sources d'approvisionnement¹⁴⁹. Il a en outre été question de ne pas permettre aux municipalités ou aux administrations aéroportuaires locales éventuelles de présenter des propositions.

Interrogé sur la version définitive de la demande de propositions, M. Hession a parlé en termes très élogieux de ce qu'il a qualifié de «demande de propositions de premier ordre», louant, en particulier, la clarté des objectifs et des problèmes à régler, la précision des critères d'évaluation et l'ouverture aux idées novatrices du secteur privé¹⁵⁰.

Au cours de cette période, Paxport est demeurée en rapport avec Air Canada. Nous avons pris connaissance d'une note de service, écrite par M. Hession en date du 21 mars 1991, dans laquelle il est question d'une rencontre qu'il a eue avec un représentant d'Air Canada. On y parle de la relation «étroite et constructive» qui existait entre eux à ce moment-là, soit juste avant qu'Air Canada collabore au processus d'élaboration de la demande de propositions. Mais ces rapports n'avaient plus rien de la collaboration officielle qui avait entouré la présentation spontanée d'une proposition par Paxport en 1989; ils traduisaient plutôt la priorité qu'Air Canada s'était donnée, à savoir défendre les propres intérêts d'Air Canada¹⁵¹. Dans une déclaration quelque peu ambiguë, M. Hession nous a dit qu'au cours de l'été 1991 les rencontres avaient commencé à s'espacer et qu'Air Canada s'était mise à explorer les possibilités du côté de promoteurs concurrents¹⁵².

¹⁴⁸ Voir *Délibérations*, 8:92.

¹⁴⁹ Voir *Délibérations*, 8:93.

¹⁵⁰ Voir *Délibérations*, 9:53-54.

¹⁵¹ Voir *Délibérations*, 9:29-30.

¹⁵² Voir *Délibérations*, 9:34.

b) Ses lobbyistes

M. Bill Neville nous a informés que, du 23 janvier 1990 à la fin août 1993, il s'était occupé de la coordination générale du lobbying pour le compte de Paxport, moyennant des honoraires de 4 000 \$ par mois et le remboursement de ses dépenses¹⁵³. Vers la fin de son contrat, soit en juin 1993, il a dirigé l'équipe de transition de M^{me} Campbell à la suite de son accession à la fonction de premier ministre, et, dans le cadre de ses responsabilités, a fourni des avis sur la restructuration de l'appareil gouvernemental et sur la réaffectation de sous-ministres, qui a notamment fait passer M^{me} Labelle à l'Agence canadienne de développement international, M^{me} Jocelyne Bourgon devenant la nouvelle sous-ministre des Transports¹⁵⁴. M. Neville nous a aussi appris qu'entre septembre 1991 et août 1994 il travaillait aussi pour Air Canada, comme conseiller sur des questions qui n'étaient pas liées au projet de réaménagement des aéroports 1 et 2¹⁵⁵.

Selon M. Neville, à l'étape de l'élaboration de la demande de propositions, son but premier avait été de convaincre le gouvernement d'agir le plus rapidement possible¹⁵⁶.

Par la suite, il y a eu des démarches concernant d'importantes questions liées à l'élaboration de la demande de propositions, dont le délai de présentation des propositions. En appuyant le délai de 90 jours, qui ne lui paraissait «que tout à fait normal», Paxport montrait qu'elle croyait avoir une longueur d'avance sur la plupart de ses concurrents parce qu'elle avait fait plus de travail préparatoire¹⁵⁷. La structure du processus d'appel de propositions a aussi fait l'objet de démarches auprès de dirigeants élus, notamment le ministre Corbeil. Comme on l'a vu, Paxport souhaitait que l'étape de la déclaration d'intérêt soit éliminée¹⁵⁸.

Enfin, dans une note envoyée à M. Neville en février 1992, M. Hession brosse un vaste plan d'action qui visait les dernières étapes de l'élaboration de la demande de propositions et le processus d'évaluation ultérieur. Selon M. Hession, on voulait s'assurer que tous les maires, commissaires au développement et présidents régionaux, de même que les

¹⁵³ Voir *Délibérations*, 16:11-12.

¹⁵⁴ Voir *Délibérations*, 16:21.

¹⁵⁵ Voir *Délibérations*, 16:15.

¹⁵⁶ Voir *Délibérations*, 16:12.

¹⁵⁷ Voir *Délibérations*, 16:23.

¹⁵⁸ Voir *Délibérations*, 16:31.

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membres du groupe de travail sur l'aéroport que venait de constituer le maire de Toronto, étaient personnellement informés des propositions de Paxport¹⁵⁹.

Nous avons également entendu M. Andrew Pascoe, de A.D. Pascoe and Associates. Il nous a affirmé qu'il s'était engagé par contrat en 1992 et 1993, à représenter Paxport dans le cadre de contrats avec des représentants des administrations provinciales, régionales et municipales, des groupes d'entreprises, des syndicats et d'autres organismes, mais jamais avec des représentants du gouvernement fédéral¹⁶⁰. Ces contacts visaient principalement à obtenir le plus d'appuis possible en vue du réaménagement des aérogares 1 et 2 et à faire valoir les avantages de la proposition de Paxport auprès de tous les intéressés.

iv) Morrison Hershfield

Un quatrième promoteur, Morrison Hershfield, a élaboré une proposition de réaménagement d'aérogare au cours de cette période. Mais comme nous le verrons plus loin, cela n'avait aucun lien avec la demande de propositions qui se préparait à ce moment-là.

4. La publication de la demande de propositions

Dès le début de 1992, des faits nouveaux dans la situation de l'aéroport, survenus au cours de l'élaboration de la demande de propositions ont soulevé deux problèmes sérieux, qui ont finalement dû être réglés par le ministre et le Cabinet¹⁶¹.

La récession avait amené Air Canada et d'autres compagnies aériennes à s'opposer encore plus vivement au projet d'aménagement en raison des hausses de loyer qu'il risquait d'entraîner. Ces compagnies avait alors réclamé, à tout le moins, le report des principaux travaux d'aménagement.

Selon les fonctionnaires du Ministère, il semblait toutefois crucial d'aller de l'avant compte tenu du plan stratégique à long terme pour l'optimisation de l'aéroport Pearson et des échéances de cinq à sept ans que comportait le projet¹⁶². Par ailleurs, si elle rendait les travaux d'agrandissement moins urgents, la récession créait une autre nécessité, qui est mentionnée de plus en plus souvent à partir du milieu de 1991 dans les documents ministériels internes portant sur ce dossier et dont le ministre a fait grand cas en annonçant

¹⁵⁹ Voir *Délibérations*, 8:90.

¹⁶⁰ Voir *Délibérations*, 16:39.

¹⁶¹ Voir *Délibérations*, 6:27.

¹⁶² Voir *Délibérations*, 8:15-16; 2:44; 6:30.

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le lancement de la demande de propositions. C'était la nécessité de stimuler la croissance économique de la région de Toronto et de créer des emplois dans le secteur de la construction, durement touché par la récession¹⁶³. Enfin, comme l'a souligné le ministre Corbeil durant son témoignage, l'objectif premier du projet n'était pas d'accroître la capacité de l'aéroport, mais, vu les prévisions du trafic-passagers, c'était un facteur à considérer¹⁶⁴. Cet avis est partagé par des fonctionnaires, dont M. Power, pour qui la modernisation des aéroports existants était primordiale tout comme l'était la nécessité d'entreprendre les travaux avant que la réduction de la capacité d'accueil attribuable à la construction ne crée un problème d'engorgement général¹⁶⁵.

Les tentatives répétées d'établir une administration aéroportuaire locale à Toronto ont soulevé une question : fallait-il retarder le projet de demande de propositions dans l'attente – ou l'espoir – que l'association du Grand Toronto, ou une autre, s'entende avec le ministre au sujet de la reconnaissance? À cette question s'en greffaient deux autres : 1) cette reconnaissance était-elle possible dans un avenir prévisible? 2) dans le cas contraire, si le réaménagement des aéroports 1 et 2 était confié au secteur privé, le rôle d'une éventuelle administration aéroportuaire locale s'en trouverait-il sérieusement réduit?

Comme on l'a vu, le ministre Corbeil et les fonctionnaires de Transports Canada estimaient, au début de 1992, qu'on n'avait pas fait beaucoup de progrès en vue d'amener Mississauga et les autres municipalités à s'entendre sur la prise en charge de l'aéroport de l'île de Toronto par la future administration aéroportuaire locale. On n'était donc pas très optimiste quant à la reconnaissance rapide d'une telle administration.

L'opinion de la sous-ministre de l'époque, M^{me} Labelle, opinion qui reflète les avis des spécialistes du Ministère, était que l'administration aéroportuaire locale constituée après la location des aéroports 1 et 2 à une entreprise privée, conserverait des responsabilités importantes, dont la répartition des compagnies aériennes entre les aéroports, la gestion de l'accès au transport au sol, les décisions relatives à l'aménagement du secteur 4 (la parcelle de terrain adjacente aux aéroports qui pourrait servir à de futurs travaux d'agrandissement), la gestion des autres terrains de l'aéroport et, éventuellement, le règlement des questions touchant l'aménagement des pistes¹⁶⁶.

Au début de 1992, le ministre Corbeil a demandé au Cabinet l'autorisation de procéder sans tarder au lancement de la demande de propositions. Comme on l'a vu, cette

¹⁶³ Note de Transports Canada, 1993, document du comité 1-1#0061.

¹⁶⁴ Voir *Délibérations*, 21:26.

¹⁶⁵ Voir *Délibérations*, 6:37.

¹⁶⁶ Voir *Délibérations*, 8:26.

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demande était déjà bien avancée, ce qui a permis de la publier le 16 mars 1992, soit sept semaines environ après le feu vert du Cabinet.

Dans la demande de propositions, qui comptait une bonne cinquantaine de pages, on exposait en détail les objectifs, considérations et exigences établis par le gouvernement relativement à 12 éléments, depuis les prévisions du trafic jusqu'aux plans des pistes, en passant par les diverses installations des aérogares. On y décrivait également la structure de gestion et de fonctionnement qui serait établie, les conditions et les ententes commerciales, et les conditions d'admissibilité. Enfin, on expliquait quels devaient être la structure et le contenu des propositions, de même que les critères d'évaluation qui seraient appliqués. La demande énonçait aussi diverses conditions, dont l'obligation de se conformer à la *Loi sur la concurrence*, et fournissait des renseignements complémentaires.

En annexe étaient indiquées la marche à suivre à l'intention des proposants et les échéances, dont celle du dépôt des propositions, fixée à 15 heures le 19 juin 1992. Au moment de l'annonce on a indiqué qu'on prendrait en considération les demandes de report d'échéance.

5. Observations et conclusions

A) Le processus

Au cours de nos audiences sur l'élaboration de la demande de propositions, nous avons continué de demander systématiquement aux fonctionnaires qui ont eu un rôle important à jouer à chacune des étapes de nous donner, sous serment, leur avis sur le processus auquel ils avaient participé. Nous leur avons, en particulier, demandé si l'obligation de faire vite avait nui à leur travail, s'ils avaient fait l'objet d'ingérences politiques dans leur travail, si les lobbyistes avaient influencé leurs décisions ou étaient intervenus indûment dans ce dossier, et si, de façon générale, ils étaient convaincus que le processus s'était déroulé régulièrement.

Tous, sans exception, ont répondu du processus auquel ils avaient pris part. Le ministre des Transports de l'époque, M. Jean Corbeil¹⁶⁷, la sous-ministre, M^{re} Huguette Labelle¹⁶⁸, le sous-ministre adjoint responsable des aéroports, M. Victor Barbeau¹⁶⁹, le directeur général responsable de l'élaboration de la demande de propositions, M. Gerald

¹⁶⁷ Voir *Délibérations*, 21:10; 21:66-68-69-72; 21:97.

¹⁶⁸ Voir *Délibérations*, 8:39.

¹⁶⁹ Voir *Délibérations*, 3:42.

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Berigan¹⁷⁰, et le président du comité d'évaluation et responsable de l'élaboration des critères d'évaluation, M. Ron Lane, ont tous entériné le processus jusqu'à l'annonce du choix de la meilleure proposition globale¹⁷¹.

Le processus a également été avalisé par M. William Rowat, associé au projet en tant que haut fonctionnaire du Bureau du Conseil privé¹⁷², par M. Mel Cappe, principal intervenant du Conseil du Trésor¹⁷³ et par M. John Simke, représentant la firme Price Waterhouse qui a participé à l'élaboration de la demande de propositions¹⁷⁴.

Nous avons par ailleurs posé les mêmes questions à des fonctionnaires qui faisaient partie des équipes dirigées par les personnes que nous venons d'énumérer. La constatation est la même : chacun affirme que les règles établies et les normes de la fonction publique ont été pleinement respectées.

Le ministre Corbeil nous a donné un résumé utile de l'influence des lobbyistes sur l'élaboration de la demande de propositions. Selon lui, le politicien qui refuse toute communication avec eux ne fait pas son travail. Le fait d'avoir écouté des lobbyistes au même titre que d'autres intéressés a permis d'élaborer une meilleure demande de propositions. Il incombait toutefois au ministre de prendre ensuite la bonne décision¹⁷⁵. Et, après 20 années passées en politique, le ministre Corbeil s'estimait tout à fait capable de le faire. Après un examen rétrospectif du processus qui a produit les accords Pearson, M. Corbeil a pu déclarer :

[J]'affirme solennellement que l'entente relative aux aéroports 1 et 2 de l'aéroport international Lester B. Pearson de Toronto a été conclue, au début du mois d'août 1993, dans le respect absolu des lois qui nous gouvernent, ainsi que des principes d'honnêteté, de probité, d'intégrité et d'équité qui caractérisent nos institutions. J'affirme également, monsieur le président, que l'intérêt public a guidé la démarche de tous les participants à cette réussite collective dont je suis particulièrement fier¹⁷⁶.

¹⁷⁰ Voir *Délibérations*, 6:29.

¹⁷¹ Voir *Délibérations*, 6:80.

¹⁷² Voir *Délibérations*, 11:30.

¹⁷³ Voir *Délibérations*, 14:60.

¹⁷⁴ Voir *Délibérations*, 15:12.

¹⁷⁵ Voir *Délibérations*, 21:69-70.

¹⁷⁶ Voir *Délibérations*, 21:87 et 21:10.

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Au cours de nos audiences, nous n'avons rien trouvé qui aille à l'encontre de la conviction des participants quant à l'intégrité totale du processus d'élaboration de la demande de propositions en vue du réaménagement des aérogares 1 et 2. Toutes les mesures permettant de s'assurer que les intérêts privés ne l'emportaient pas sur l'intérêt public ont été appliquées à la lettre.

B) La politique

Comme nous l'avons vu, il a fallu, par suite de la décision du ministre de procéder à une demande de propositions, examiner la situation de l'aéroport Pearson pour s'assurer que la décision prise en 1990 de confier le réaménagement des aérogares 1 et 2 à un consortium privé au moyen d'un bail à long terme était toujours justifiée. À notre avis, les motifs donnés par le ministre et les fonctionnaires pour expliquer la décision d'aller de l'avant demeurent probants.

De fait, d'après ce que nous avons entendu, personne n'était contre le réaménagement. Indéniablement, la modernisation des aérogares s'imposait : seuls le rythme des travaux et le rôle du secteur privé soulevaient des questions.

i) Les compagnies aériennes

L'objection des compagnies aériennes portait principalement sur le rythme des travaux d'aménagement; ce qui ne permet pas de déduire automatiquement que les sociétés aériennes s'opposaient à la participation du secteur privé. En réalité, Air Canada avait elle-même, peu de temps auparavant, collaboré avec Paxport à la présentation conjointe d'une proposition spontanée.

Or, cette argumentation illogique ressort clairement dans les lettres de l'Association du transport canadien au ministre. On s'y insurge contre la participation du secteur privé tout en demandant qu'Air Canada, une entreprise privée, puisse contrôler les travaux d'aménagement.

La réponse logique aux préoccupations des sociétés aériennes consistait à établir, dans la demande de propositions, des exigences afin que les travaux de réaménagement n'imposent pas de coûts excessifs à ces compagnies et se fassent à un rythme qu'elles, et les autres locataires, pourraient soutenir. Cela a été fait. Sous la rubrique «Stratégies en matière de prix» de la section de la demande de propositions consacrée à la gestion et à l'exploitation, on demandait aux proposant de donner une description détaillée des droits et redevances qui seraient exigés des sociétés aériennes, notamment :

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le rôle que les sociétés aériennes seront en mesure de jouer pour contrôler ou influencer les droits et redevances qui leur seront imposés;
le rôle que les sociétés aériennes vont jouer dans la décision quant à la portée et au calendrier des aménagements qui auront un impact sur les droits et redevances¹⁷⁷.

On y indiquait également que l'on tiendrait compte, lors de l'évaluation des propositions, de la mesure dans laquelle la proposition répondait aux attentes des clients et des relations d'affaires existants¹⁷⁸.

Nous en arrivons à la conclusion, que confirme la signature des accords de l'aéroport Pearson par Air Canada, que les préoccupations des compagnies aériennes ont été adéquatement prises en compte dans la demande de propositions.

ii) Les tenants de l'administration aéroportuaire locale

L'objection liée à l'administration aéroportuaire locale n'était pas, elle non plus, une objection aux travaux d'aménagement. De fait, les représentants de la région du Grand Toronto qui ont été associés au projet d'établissement d'une administration aéroportuaire locale s'accordaient tous à dire que les travaux d'aménagement des aéroports s'imposaient. Cette position est clairement exprimée dans la lettre adressée, le 6 mars 1992, par le président du conseil du Grand Toronto, M. Alan Tonks, à M. Michael Wilson, alors ministre du Commerce international, de l'Industrie, des Sciences et de la Technologie et principal ministre responsable de la région de Toronto. Exprimant son appui à l'égard du projet d'administration aéroportuaire dans la région de Toronto, tout en notant que des difficultés continuaient pourtant de l'entraver, M. Tonks a écrit :

Ces problèmes peuvent peut-être se régler rapidement, mais d'autres questions, comme les pistes et la capacité des aéroports, exigent une attention immédiate. La privatisation des aéroports 1 et 2 devrait se faire à condition que la possibilité d'une administration viable ne soit pas écartée.

Comme on l'a vu, bien que le gouvernement eut annoncé, en 1990, son intention de moderniser les aéroports, aucune administration aéroportuaire locale n'avait encore été formée en 1992, et on était encore aux pourparlers. La création d'une telle administration pour diriger les travaux d'aménagement n'était donc pas une option réaliste à ce moment-là.

¹⁷⁷ *Demande de propositions*, p. 25.

¹⁷⁸ *Ibid.*, p. 50.

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En retardant les travaux le temps qu'une administration aéroportuaire locale soit constituée, on serait allé à l'encontre de la conviction même du ministre quant à l'urgence de ces travaux, surtout dans le cas de l'aérogare 1. On se serait aussi heurté à la vive opposition du maire de la municipalité où l'aéroport Pearson est situé, qui réclamait du gouvernement soit la rénovation de l'aérogare 1, soit sa fermeture.

Il était également inutile de retarder le projet pour s'assurer que le réaménagement n'empêcherait pas la formation d'une administration aéroportuaire locale. Le ministre Corbeil, nous l'avons vu, avait reçu des fonctionnaires l'assurance que le projet ne remettait pas du tout en cause l'utilité d'une administration locale, puisque des responsabilités importantes pourraient encore lui être confiées. En outre, la demande de propositions précisait que le bail foncier des aérogares devait être cessible à une administration aéroportuaire locale. Cela voulait donc dire qu'une administration reconnue aurait obtenu des droits considérables sur la gestion du projet lui-même¹⁷⁹.

L'imprécision de la politique sur la reconnaissance des administrations aéroportuaires locales dont le ministre Corbeil a hérité à son arrivée aux Transports n'est certainement pas étrangère aux problèmes qui sont apparus lorsque le gouvernement a annoncé son intention de procéder à une demande de propositions. La résistance du ministre à l'égard d'une administration aéroportuaire locale constituée par le gouvernement provincial s'appuyait sur les «principes supplémentaires» de 1989 voulant qu'une administration aéroportuaire locale représente les entreprises locales et les intérêts de la collectivité. La politique de 1987 aurait, semble-t-il, laissé la porte ouverte à une participation directe de la province. En effet, elle donnait une définition beaucoup plus large de l'administration aéroportuaire locale, et les gouvernements provinciaux y figuraient au nombre des participants possibles. Comme les principes supplémentaires de 1989 n'annulaient pas la politique de 1987, la coexistence de ces deux documents a créé une confusion compréhensible chez les organisations intéressées quant aux conditions de la reconnaissance. Ces lignes directrices ne satisfaisaient donc pas pleinement à un critère d'efficacité fondamental : elles créaient des problèmes au ministre au lieu de l'aider à en résoudre.

Nous en concluons que la décision de retarder les travaux de réaménagement au bénéfice des tenants de l'établissement d'une administration aéroportuaire à Toronto n'était pas plus fondée en 1992 qu'elle ne l'avait été en 1990. Elle l'était peut-être encore moins étant donné que la demande de propositions prouvait de façon tangible que les travaux de réaménagement n'empêcheraient pas la création d'une administration locale et qu'ils pourraient même être gérés par elle.

¹⁷⁹ *Ibid.*, p. 33.

Chapitre III - La préparation de la demande de propositions

iii) Questions d'ordre technique

L'élaboration de la demande de propositions a soulevé toute une série de questions techniques qui ont obligé le ministre à s'en remettre beaucoup aux avis des fonctionnaires. Le ministre a toutefois affirmé qu'il s'était efforcé de régler toutes ces questions en concertation avec les fonctionnaires compétents, et nous n'avons rien entendu de la part de ces derniers, ni autrement, qui pourrait nous laisser supposer le contraire.

Il est important de souligner que les fonctionnaires qui ont conseillé le ministre n'avaient aucune raison de favoriser Paxport ou un autre proposant. Ils étaient tenus, de par leurs fonctions, d'assurer une saine concurrence, ce qu'ils ont juré avoir fait.

Nous en venons à la conclusion que par l'inclusion d'exigences techniques dans la demande de propositions, le ministre et les fonctionnaires ont réussi à préserver au mieux l'intérêt public en établissant un processus concurrentiel équitable. Considérées globalement, ces exigences mettaient le secteur privé au défi de proposer au gouvernement et à la population canadienne des solutions novatrices pour la modernisation des aéroports de l'aéroport Pearson et de participer à un processus d'attribution juste et ouvert.

iv) Questions de lobbying

À l'évidence, les promoteurs ont fait un lobbying intense en faveur des exigences de la demande de propositions qui correspondaient à leurs points forts. Notre enquête n'a toutefois rien révélé d'inquiétant dans ce fait. Le ministre Corbeil et ses fonctionnaires ont porté des jugements impartiaux sur chacune des questions qu'il a fallu régler au cours de l'élaboration de la demande de propositions et ils ont rejeté celles parmi les propositions des lobbyistes qu'ils ne considéraient pas favorables à l'intérêt public.

M. Hession, par exemple, a exercé des pressions considérables, pour le compte de Paxport, en faveur d'une «définition du contrat», qui aurait consisté, pour le gouvernement et un promoteur, à établir ensemble les exigences du projet et à élaborer un plan d'aménagement. Avec cette méthode, on évitait le risque que les efforts investis dans l'élaboration de la proposition soient réduits à néant, un risque qui est présent dans un régime de concurrence. Les démarches de M. Hession ont toutefois été infructueuses. Les efforts visant à persuader le gouvernement d'exiger que les aéroports 1 et 2 fassent concurrence à l'aéroport 3 - ce qui aurait empêché l'ATDG (et son principal propriétaire, Claridge) de répondre à la demande de propositions - ont eux aussi échoué, tout comme l'opposition qu'avait initialement manifestée Claridge face au choix de la date du lancement de la demande de propositions (qui, à son avis, ralentirait le taux de croissance du volume de passagers et des revenus à l'aéroport 3).

Chapitre III - La préparation de la demande de propositions

Le ministre et les fonctionnaires avaient leurs propres raisons d'agir comme ils l'ont fait, en se fiant, en partie, aux avis reçus de consultants indépendants participant au processus d'élaboration de la demande de propositions. Si l'adoption de certaines exigences est une indication du pouvoir de persuasion de M. Hession, cela montre seulement que ce dernier connaissait très bien l'appareil gouvernemental et les arguments d'intérêt public auxquels les représentants de l'État allaient vraisemblablement accorder du poids.

Notre conclusion est l'aboutissement des efforts systématiques que nous avons faits, durant nos audiences, pour aller au fond des allégations voulant que les lobbyistes (ou Paxport en particulier) aient exercé une influence néfaste sur l'établissement des règles du jeu. Nous n'avons rien trouvé qui permette de penser que la demande de propositions n'était pas parfaitement équitable. À vrai dire, on ne saurait trouver meilleur exemple de l'attitude novatrice que voulait susciter la politique de 1987 sur la gestion des aéroports.

**Nous voulons la proposition de Paxport.
Nous voulons leur édifice.**

John Desmarais
Transport Canada

Dans le cas de l'aéroport Pearson, la parution de la demande de propositions est une étape marquante du passage de la prise de décisions et des orientations politiques à l'exécution des décisions par les fonctionnaires. La demande de propositions définit, pour l'essentiel, les objectifs fixés par le ministre des Transports et le Cabinet. Après sa publication, l'attention s'est portée sur ceux qui devaient veiller à la réalisation de ces objectifs, de façon aussi efficace et efficiente que possible, en assurant une concurrence équitable entre les proposants.

Pour assurer la sélection d'un proposant avec lequel il serait possible de négocier un accord, les fonctionnaires ont veillé à ce que les propositions répondent aux objectifs établis dans la demande de propositions; leur tâche à cet égard comportait deux phases distinctes.

Au cours de la première phase, qui comprend la présentation des propositions, les hauts fonctionnaires de Transports Canada ont conseillé les proposants, donné suite à la décision du ministre de reporter l'échéance, et accusé réception des propositions.

La seconde phase a consisté à évaluer les propositions et à faire une recommandation au ministre. Le choix de la meilleure proposition globale a ensuite été annoncé.

1. La présentation des propositions (du 16 mars au 13 juillet 1992)

A) Les proposants

La publication de la demande de propositions a donné aux promoteurs intéressés le feu vert pour compléter leur dossier. Comme nous l'avons vu, ils avaient déjà amorcé le travail en se fondant sur des informations glanées à gauche et à droite au sujet des exigences probables de la demande ou sur des réponses obtenues du Ministère. La mise au point des propositions n'en a pas moins exigé un effort considérable de chaque proposant.

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En évoquant les activités de Paxport pendant cette période, M. Hession nous a confié que le délai fixé au départ laissait peu de marge, mais n'était ni injuste ni inadéquat, et correspondait même tout à fait aux pratiques normales d'adjudication des marchés publics¹⁸⁰. Le groupe Paxport avait alors réuni à son siège de la rue Bloor une équipe qui, à son apogée, comptait près de 60 chargés de projet et consultants, dont le travail intense a abouti à une proposition de quelque 2 000 pages. D'après M. Hession, ce travail avait essentiellement pour but de déceler les besoins des usagers de l'aéroport et d'y répondre. C'est à cette fin que la firme Decima Research a été chargée de réaliser des sondages d'opinion. Le groupe Paxport a par ailleurs examiné les caractéristiques de plusieurs aéroports internationaux haut de gamme et obtenu directement l'avis des dirigeants de l'aéroport Schiphol d'Amsterdam, qui se place régulièrement en tête de ce groupe, au moyen d'un accord quinquennal de consultation comportant le prêt d'un employé de Schiphol à l'équipe de Paxport¹⁸¹.

Selon M. Hession, la proposition produite présentait quatre grandes particularités : 1) elle assurait un meilleur taux de rendement aux contribuables canadiens que le statu quo; 2) elle rehaussait la compétitivité des lignes aériennes en leur offrant des installations modernes à des loyers équitables; 3) elle permettait de réaménager les installations à un coût par passager inférieur à la moyenne nord-américaine; 4) elle permettait aux actionnaires de Paxport de réaliser un niveau de rendement raisonnable et adéquat sur leur investissement¹⁸².

L'information obtenue des représentants du concurrent de Paxport, Claridge, moins détaillée que celle fournie par M. Hession, a quand même donné un bon aperçu des activités de Claridge pendant cette période. Le président de Claridge Properties Ltd., M. Coughlin, nous a dit que, peu après la parution de la demande de propositions, M. Jim Bullock, le coordonnateur des tentatives du gouvernement de l'Ontario pour créer une administration aéroportuaire locale (la Southern Ontario Airport Authority), l'a contacté en vue de présenter une proposition. Claridge a accepté de participer à la préparation d'une proposition commune et, dès avril 1992, son équipe d'experts s'est mise à l'oeuvre.

Le travail s'est poursuivi jusqu'à la fin mai ou au début de juin 1992, lorsqu'a été abandonnée la tentative de création d'une administration aéroportuaire locale, abandon attribuable, selon M. Coughlin, au désaccord entre les municipalités de Toronto au sujet de la structure¹⁸³.

¹⁸⁰ Voir *Délibérations*, 8:75.

¹⁸¹ Voir *Délibérations*, 8:40.

¹⁸² Voir *Délibérations*, 8:76.

¹⁸³ Voir *Délibérations*, 17:12 et 17:72.

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Cet abandon a été perçu comme un échec, mais Clardige a décidé de poursuivre seul. Une prorogation de l'échéance fut obtenue de Transports Canada, et Claridge a ainsi pu présenter sa proposition le 13 juillet 1992¹⁸⁴. M. Coughlin a attribué la nécessité d'obtenir un délai à la situation créée par le retrait du partenaire, jugeant par ailleurs la période initiale de 90 jours «raisonnable»¹⁸⁵. Il a même avoué que, si on lui avait refusé un délai supplémentaire, Claridge aurait été en mesure de présenter sa proposition, bien que sous une forme plus imparfaite.

Les deux seules propositions acceptées furent celles de Paxport et de Claridge. La firme Morrison Hershfield a également présenté une proposition mais, comme elle a préféré ne pas verser le dépôt d'un million de dollars exigé par la demande de propositions, sa soumission n'était pas admissible à l'examen par Transports Canada.

Nous n'avons pas eu l'occasion de discuter directement avec la firme Morrison Hershfield, mais nous avons eu accès à des documents qu'elle a utilisés pour présenter un exposé dans le cadre de l'examen de M. Nixon à l'automne 1993. Selon ces documents, la firme aurait informé M. Nixon que sa proposition ne répondait pas aux exigences de la demande de propositions, notamment parce qu'elle ne prévoyait pas le transfert de personnel ou d'actif immobilier du gouvernement au secteur privé.

2. Au Ministère

Le ministre et ses fonctionnaires ont été appelés à prendre une importante décision pendant cette période lorsque Claridge a demandé de proroger l'échéance pour la présentation des propositions. Dans son témoignage à ce sujet, le ministre Corbeil laisse entendre que cela semblait aller de soi étant donné la position annoncée lors de la publication de la demande de propositions. L'échéance a donc été fixée au 13 juillet 1993, portant ainsi à 127 jours le temps accordé à Claridge pour établir des propositions¹⁸⁶.

M. Hession semble avoir protesté vivement, au nom de Paxport, lorsqu'il a appris que le Ministère envisageait de reporter l'échéance. Il est fait allusion, dans une lettre datée du 9 juin 1992¹⁸⁷, à une conversation du 4 juin au cours de laquelle M. Hession aurait affirmé 1) que la proposition de Paxport serait prête à la date d'échéance initiale et 2) qu'un délai non

¹⁸⁴ Voir *Délibérations*, 17:12.

¹⁸⁵ Voir *Délibérations*, 17:74.

¹⁸⁶ Voir *Délibérations*, 31:34.

¹⁸⁷ Raymond Hession à Huguette Labelle, Document du comité LA 001538.

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seulement augmenterait les coûts du projet mais exposerait Paxport à des risques d'espionnage industriel ou à la possibilité de révélations faites par mégarde. Dans une lettre polie, le sous-ministre a rappelé à M. Hession que, au moment de publier la demande de propositions, le ministre s'était dit prêt, vu le peu de temps accordé, à prendre en considération les demandes de prolongation reçues de proposants sérieux.

Selon l'actuel sous-ministre, M. Nick Mulder, la pratique normale du Ministère à ce stade est de communiquer à tous les concurrents l'information fournie à l'un d'eux, en un lieu ouvert à tous les intéressés lorsque c'est possible¹⁸⁸. C'est ainsi que la salle de consultation installée à Toronto est devenue la première source d'information pour les proposants. Les documents ministériels font en outre état, pour la période d'avril-mai 1992, de «nombreuses demandes» d'inspection des lieux et d'autres données techniques de la part des proposants¹⁸⁹.

En plus de fournir de l'information, la direction du Ministère mettait pendant cette période la dernière main aux modalités d'évaluation. Le chef de l'équipe d'évaluation, M. Lane, nous a décrit les activités de son équipe. De mars à juin 1992, basée à Ottawa, l'équipe (divisée en cinq sous-comités chargés d'évaluer les compétences des proposants, les plans d'aménagement, les plans d'entretien et d'exploitation, les plans de cession et les plans d'entreprise) s'est appliquée à mettre la dernière main aux critères d'évaluation, aux pondérations et à la méthodologie d'évaluation, ainsi qu'à préparer des guides d'évaluation pour chaque membre de l'équipe¹⁹⁰.

La description que nous en a faite le coprésident du sous-comité d'évaluation des plans de cession, M. John Cloutier, semble indiquer que chaque sous-comité jouissait d'une assez grande autonomie dans son domaine de spécialité. Le sous-comité d'évaluation des plans de cession, composé d'experts du Ministère et de l'extérieur, a travaillé de mars à juin pour établir les détails des critères d'évaluation et du plan conformément à la démarche globale de l'équipe¹⁹¹.

Le témoignage d'un des membres du sous-comité d'évaluation des plans d'entreprise, M. D.G. Dickson, brosse le même tableau d'experts travaillant de façon relativement autonome au sein des sous-comités. Il donne par contre l'impression que le sous-comité en question faisait appel plus souvent que les autres, à cause de la nature de son travail sans doute, à des experts de l'extérieur. Pendant cette phase préparatoire, le sous-comité a retenu

¹⁸⁸ Voir *Délibérations*, 2:23.

¹⁸⁹ Document du comité, LA 000352

¹⁹⁰ Voir *Délibérations*, 6:48.

¹⁹¹ Voir *Délibérations*, 6:51 et 6:56.

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les services de Richardson Greenshields pour la durée du processus d'évaluation afin d'obtenir les conseils d'un professionnel sur des points de comptabilité et de finance¹⁹².

Ces efforts s'imposaient pour rendre le processus d'évaluation conforme à l'une des exigences générales de «régularité», à savoir l'adoption d'une méthodologie d'évaluation détaillée avant l'examen de toute proposition. Il appartenait à Price Waterhouse, la firme de consultants chargée d'appuyer le processus, de veiller au respect de ces exigences. Ce rôle ne comprenait pas l'évaluation d'éléments concrets, comme la pondération des divers critères d'évaluation. Toutefois, selon M. John Simke de Price Waterhouse, on aurait formulé des objections si les instructions données dans la demande de propositions ne s'étaient pas retrouvées dans la méthodologie d'évaluation. Aucune préoccupation de ce genre ne semble avoir été soulevée¹⁹³.

La phase préparatoire a pris fin, selon M. Lane, avec l'approbation, par les coprésidents de comités, de toute la documentation et des guides d'évaluation, après quoi aucune déviation du processus n'a été autorisée. La documentation a également été soumise au ministre, et personne n'a tenté de modifier la méthodologie présentée¹⁹⁴.

C'est également au cours de la phase préparatoire que l'équipe d'évaluation a fixé un délai approprié pour l'évaluation des propositions. Selon M. Lane, les membres de l'équipe décidèrent que, si les proposants avaient pu produire les propositions en trois mois environ, il était raisonnable de «tenter de les évaluer en deux mois» afin d'éviter que le processus ne donne lieu à toutes sortes de conjectures. On s'accorda donc deux mois pour l'évaluation. M. Lane nous a assuré qu'aucune pression externe n'a été exercée sur l'équipe pour accélérer les choses. Au contraire, l'équipe s'est fait dire qu'elle pouvait prendre tout le temps nécessaire¹⁹⁵.

L'élaboration par Price Waterhouse d'une évaluation des possibilités commerciales liées au projet marquait la fin des préparatifs du Ministère. Le but était de fournir au gouvernement une fourchette à l'intérieur de laquelle une proposition financière d'un promoteur pourrait être jugée raisonnable.

Aux fins des estimations, Price Waterhouse a établi deux grands scénarios : une formule prudente qui extrapolait les recettes provenant des lignes aériennes au niveau du recouvrement des coûts, et une formule optimiste extrapolant les recettes tirées des lignes

¹⁹² Voir *Délibérations*, 6:52.

¹⁹³ Voir *Délibérations*, 15:12.

¹⁹⁴ Voir *Délibérations*, 6:52.

¹⁹⁵ Voir *Délibérations*, 6:53.

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aériennes d'après ce que celles-ci pourraient accepter de payer, en se fondant sur les recettes de l'aérogare 3. Selon le premier scénario, les estimations de la valeur des droits d'exploitation des aérogares se situaient entre 127,6 et 331,3 millions de dollars, alors que le scénario optimiste permettait d'obtenir des estimations variant entre 342,8 et 561,4 millions¹⁹⁶.

3. Autres activités

A) Administrations aéroportuaires locales

Il semble que l'on ait vu apparaître, pendant la période officielle d'élaboration des propositions, plusieurs projets d'administration aéroportuaire locale qui se faisaient concurrence; les témoignages entendus n'ont pas précisé toutefois les dates de leur naissance ou de leur disparition. Pendant que s'effritaient les tentatives pour créer une administration aéroportuaire du sud de l'Ontario et pour présenter une proposition de concert avec Claridge, les partisans de la Greater Toronto Regional Airport Authority continuaient de presser le ministre de retarder le processus. Selon le président du conseil régional de Durham, M. Harrema, on a envoyé des lettres et les députés locaux, entre autres, ont été contactés¹⁹⁷.

D'après M. Gardner Church, que le rôle de ministre responsable de la région de Toronto plaçait au coeur des démarches de la province en faveur d'une proposition par une administration aéroportuaire locale, «des efforts assez spectaculaires» furent déployés pour susciter une offre crédible. La demande de propositions exigeait cependant une soumission détaillée sur le plan technique, laquelle aurait été rendue «très difficile» à élaborer dans le délai fixé¹⁹⁸. M. Church a en outre révélé que la tentative a été abandonnée quand le gouvernement fédéral a souligné que sa politique de reconnaissance d'administration aéroportuaire locale interdit la participation provinciale¹⁹⁹.

Conjugués à l'opposition de la mairesse de Mississauga à la GTRAA et à son appui au réaménagement immédiat, les efforts pour former la Southern Ontario Airport Authority n'ont pu que renforcer l'impression qu'avait déjà le ministre Corbeil et les autorités fédérales que de fortes divergences persistaient au sein des municipalités directement touchées par

¹⁹⁶ Estimation par Transports Canada des possibilités commerciales liées au réaménagement des aérogares 1 et 2 de l'aéroport international Lester B. Pearson; voir aussi *Délibérations*, 15:5.

¹⁹⁷ Voir *Délibérations*, 5:19.

¹⁹⁸ Voir *Délibérations*, 5:25.

¹⁹⁹ Voir *Délibérations*, 5:25.

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l'aéroport Pearson²⁰⁰. Nous notons en outre que le promoteur associé à la coentreprise de la Southern Ontario Airport Authority attribuait son échec à l'absence d'un appui suffisant de la part des municipalités de Toronto. Ceci tend à confirmer la perception des autorités fédérales plutôt que celle de M. Church.

B) Lobbying

D'après le consultant chargé de coordonner les relations gouvernementales de Paxport, M. Neville, les activités de lobbying entreprises au nom de Paxport pendant cette période étaient ciblées sur la stratégie générale d'information établie avant la parution de la demande de propositions. C'est en grande partie M. Hession qui s'est chargé, à l'aide de documents établis par les lobbyistes, d'informer les parties intéressées, dont les députés locaux de toutes allégeances politiques.

Après la sortie de la demande de propositions, toutes les activités portaient du principe, d'après M. Neville, que «les décideurs effectifs sont intouchables»²⁰¹. Nous constatons que les hauts fonctionnaires du Ministère ont confirmé l'adhésion à ce principe non seulement de M. Neville mais aussi des autres lobbyistes participant au processus²⁰².

MM. Harry Near et Bill Fox du groupe Earnscliffe, les mandataires de Claridge en cette période, nous ont donné un aperçu des activités qui se sont déroulées du printemps à l'automne de 1992. À mesure que la proposition prenait forme, les communications prenaient plus d'importance dans le travail du groupe. M. Bill Fox, responsable au premier chef des communications et du travail de recherche sur l'opinion publique chez Earnscliffe, nous a décrit les principaux éléments du travail de communication préparatoire : conception d'une présentation audio-visuelle complète pour appuyer la proposition; rassemblement de documents tels que communiqués et études de fond, projets de discours et sujets d'entretiens; établissement d'un programme de relations avec les médias; préparation du personnel de Claridge appelé à faire les présentations²⁰³.

À l'approche de l'échéance, on s'est appliqué à aider les représentants de Claridge dans leurs démarches auprès des hauts fonctionnaires des principaux ministères associés au dossier, à savoir les Transports, le Bureau du Conseil privé, les Finances et l'Industrie. Des démarches furent également entreprises auprès des politiciens, surtout ceux de la région de

²⁰⁰ Voir *Délibérations*, 8:19.

²⁰¹ Voir *Délibérations*, 16:18.

²⁰² Voir les observations et conclusions à la fin du chapitre.

²⁰³ Voir *Délibérations*, 15:83.

Toronto, et de leur personnel politique²⁰⁴. D'après nos renseignements, des listes de personnes choisies avaient été dressées dès le début de juillet afin d'assigner les fonctionnaires désignés à divers membres de l'équipe de lobbyistes. Selon M. Near, les fonctionnaires susceptibles d'intervenir dans le processus de décision figuraient sur la liste²⁰⁵.

Le récit que nous ont fait les représentants d'Earnscliffe des activités pendant cette période correspond de manière générale à celui de M. Herb Metcalfe, du groupe Capital Hill. Selon ce dernier, les premières démarches auprès des élus et des fonctionnaires ont aussi permis de recueillir de l'information sur les exigences éventuelles du gouvernement, en vue de préparer la proposition²⁰⁶. Toujours d'après M. Metcalfe, l'étendue des contacts et des activités liés au dossier des aérogares de l'aéroport Pearson était typique d'une entreprise de ce genre.²⁰⁷

4. Les propositions

Deux propositions concurrentes pour le réaménagement des aérogares 1 et 2, chacune comportant plusieurs milliers de pages avec la documentation, furent acceptées par Transports Canada le 13 juillet 1993. Comme l'exigeait la demande de propositions, chacune s'accompagnait d'un dépôt d'un million de dollars et constituait une offre irrévocable pendant 18 mois, à compter de la date limite des propositions. De manière générale, elles empruntent des façons très différentes d'atteindre les objectifs énoncés dans la demande de propositions. Leurs grandes lignes constituent néanmoins un point de repère utile pour examiner le processus d'évaluation²⁰⁸.

A) La proposition de l'ATDG (Claridge)

Voici les principaux aspects opérationnels de la proposition de Claridge. À terme, l'aérogare 1 serait remplacée, tandis que l'aérogare 2 serait agrandie et qu'une nouvelle jetée serait aménagée à l'emplacement actuel de l'aérogare 1. La proposition comportait un plan de redéploiement du trafic à l'aérogare 3 et à une aérogare satellite pendant la construction. Des modifications aux voies d'accès et l'élargissement du parc de stationnement étaient

²⁰⁴ Voir *Délibérations*, 15:82 et 119.

²⁰⁵ Voir *Délibérations*, 15:92-93 et 127.

²⁰⁶ Voir *Délibérations*, 15:120.

²⁰⁷ Voir *Délibérations*, 15:132.

²⁰⁸ Voir Transports Canada, *Aéroports, Évaluation des propositions — Projet de réaménagement des aérogares 1 et 2*, octobre 1992

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également prévus. Le réaménagement se ferait en deux étapes, de 1993 à 1998 puis à partir de 2004, et exigerait un investissement d'environ 758,3 millions de dollars.

La proposition de Claridge prévoyait un investissement inconditionnel de démarrage de 130 millions, le remboursement de 30 millions à Air Canada pour compenser ses investissements récents à l'aérogare 2, et l'imputation graduelle aux lignes aériennes, à la suite de l'investissement initial de Claridge, de frais d'utilisation atteignant un niveau comparable à ceux de l'aérogare 3.

L'offre présentée à l'État conjugait 1) un paiement forfaitaire de 30 millions de dollars (indemnité pour biens mobiliers compris), 2) un loyer de base de 7,5 millions pour chacune des six premières années, majoré par la suite de 2,5 millions à tous les cinq ans pour atteindre un plafond de 40,5 millions au bout de 59 ans et 3) un pourcentage progressif des loyers perçus (de 3 p. 100 des 70 premiers millions à 25 p. 100 de l'ensemble des recettes locatives au-delà de 200 millions).

B) La proposition de Paxport

Paxport aussi prévoyait dans sa proposition non seulement de remplacer l'aérogare 1 à terme mais aussi d'agrandir l'aérogare 2 et d'aménager une nouvelle jetée à l'emplacement de l'aérogare 1. Il prévoyait aussi l'agrandissement du parc de stationnement, et la construction d'un immeuble à bureaux, d'un hôtel et d'un bâtiment d'administration. D'autre part, le groupe proposait une vaste réorganisation des voies d'accès à l'aéroport ainsi que le déplacement des zones de stationnement de longue durée et des zones réservées aux taxis et aux limousines. Le réaménagement, qui se ferait en quatre étapes de 1993 à 1999, exigerait un investissement total de 858 millions de dollars.

La proposition comportait une option accélérée conditionnelle qui supposait un investissement initial de 150 millions, en contrepartie de quoi Paxport assumerait la gestion et l'exploitation de tous les locaux de concessions et parcs de stationnement et en encaisserait les recettes. Paxport s'engageait en outre à rembourser, étalés sur la durée de son bail, les 36 millions qu'Air Canada avait investis récemment dans l'aérogare 2. L'augmentation des frais imputés aux lignes aériennes serait étalée sur quatre ans.

L'offre faite à l'État conjugait 1) un paiement initial de 7 millions pour les biens mobiliers des aérogares, 2) un loyer de base de 27 millions qui atteindrait 30 millions la quatrième année et serait par la suite indexé au taux d'inflation et au trafic voyageurs et 3) un pourcentage élevé (30,5 p. 100) des loyers moins le loyer de base, qui augmenterait en fonction des recettes au-delà d'un seuil de 125 millions. Des tarifs uniformes distincts (indexés au taux d'inflation) étaient également proposés pour les services publics et des parcelles de terrain précises.

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Les propositions de Claridge et de Paxport comprenaient également des plans divergents de gestion et d'exploitation, de transfert du personnel fédéral et de retombées industrielles.

5. L'évaluation des propositions (du 14 juillet au 7 décembre 1992)

Une fois les propositions déposées, l'attention s'est tournée vers le Ministère pendant plusieurs mois, et au départ plus particulièrement, vers le travail de l'équipe d'évaluation qui avait pour mandat de réaliser, à l'abri de toute influence interne ou externe, un processus prédéterminé.

A) Le travail de l'équipe d'évaluation

À l'échéance du 13 juillet 1993 pour le dépôt des propositions, l'équipe d'évaluation était en train de déménager à Toronto, ce qui avait été réclamé par le responsable, M. Lane, afin que les membres de l'équipe soient complètement coupés de leurs fonctions habituelles. D'autre part, en plus de permettre l'accès direct aux experts de l'équipe de Toronto, l'éloignement d'Ottawa facilitait la tâche de ceux qui devaient assurer la sécurité du processus²⁰⁹.

Une fois reçues, les propositions ont fait l'objet de mesures de sécurité rigoureuses afin d'empêcher toute modification pendant le processus d'évaluation et d'assurer le secret commercial. Ainsi, l'original était gardé dans un coffre et des copies de travail étaient fournies à la firme de vérificateurs (Raymond, Chabot, Martin, Paré) chargée d'appuyer le processus, qui en contrôlait l'accès et l'utilisation pendant la durée de l'évaluation²¹⁰.

Les cinq sous-comités d'évaluation s'engagèrent alors dans une période de travail intensif. D'après M. Lane, la situation permettait aux participants, qui travaillaient souvent de 7 heures du matin à 10 ou 11 heures du soir pour respecter l'échéancier, de se plonger complètement dans le travail d'évaluation. Sauf pour des visites d'encouragement du sous-ministre adjoint responsable des Aéroports, l'équipe a été pour l'essentiel laissée à elle-même²¹¹.

À mesure que les sous-comités en terminaient la rédaction, leurs rapports étaient portés devant le comité d'évaluation proprement dit, qui encourageait les autres membres à contester tout aspect du contenu, y compris les constatations et explications. Plusieurs sous-

²⁰⁹ Voir *Délibérations*, 6:49.

²¹⁰ Voir *Délibérations*, 6:56.

²¹¹ Voir *Délibérations*, 6:49.

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comités durent «repren­dre leur travail», surtout pour donner une explication suffisante des cotes établies, jusqu'à ce que le comité central soit pleinement satisfait²¹². C'est à la fin de ce processus, en s'appuyant sur des conclusions et des cotes établies à l'unanimité et sur le consensus dégagé pour les autres éléments, que le comité élaborait sa conclusion globale.

Comme certaines questions sur la viabilité financière des propositions et des pro­posants devaient revenir souvent par la suite, nous avons interrogé avec un soin particulier les fonctionnaires chargés de cet aspect de l'évaluation. Nous avons ainsi appris que la firme Richardson Greenshields, chargée d'appuyer l'évaluation des plans d'entreprise, avait réalisé un contrôle préalable des pro­posants et fourni de l'information et des conseils concernant l'état financier des consortiums en cause.

La firme a informé le sous-comité d'évaluation des plans d'entreprise que, à son avis, il était raisonnable de croire que chaque pro­posant pourrait financer le projet présenté dans sa proposition²¹³. Le sous-comité d'évaluation des plans d'entreprise (et, par la suite, le comité d'évaluation proprement dit) s'est dit d'accord avec la firme. Toutefois, la capacité des consortiums à prouver que les mécanismes de financement sont en place et que des ententes sont conclues avec les principaux locataires, comme les lignes aériennes, pour assurer au promoteur des recettes suffisantes, resterait à examiner à une date ultérieure²¹⁴.

Le 28 août 1992, le comité d'évaluation terminait son travail et communiquait ses recommandations unanimes au Ministère. Il avait jugé la proposition de Paxport supérieure dans quatre des six catégories cotées : plan d'aménagement (pondération de 25 p. 100); plan d'entreprise (40 p. 100); plan de gestion et d'exploitation (20 p. 100); retombées industrielles (5 p. 100). De son côté, la proposition de Claridge avait été jugée supérieure dans deux domaines : compétences du pro­posant (pondération de 5 p. 100) et plan de transfert du personnel (5 p. 100).

Le comité en avait conclu que la proposition de Paxport, ayant recueilli 577 points contre 497 pour la proposition de Claridge, était la meilleure proposition globale (MPG).

Il avait également trouvé les deux propositions acceptables (c.-à-d. conformes aux exigences des six catégories d'évaluation établies par la demande de propositions). Il avait

²¹² Voir *Délibérations*, 6:65.

²¹³ Voir *Délibérations*, 6:68 et 6:71.

²¹⁴ Voir *Délibérations*, 6:71.

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en outre relevé, dans chacune, plusieurs conditions et restrictions dont il recommandait l'examen pendant la négociation de l'accord²¹⁵.

B) Le vérificateur du processus

Une double tâche avait été confiée, comme nous l'avons dit, à la firme Raymond, Chabot, Martin, Paré, soit suivre le processus d'évaluation de près pour s'assurer que les membres de l'équipe respectent les exigences en matière de sécurité, de confidentialité et, de manière plus générale, de procédures, et procéder à la vérification de tout le processus, une fois terminé, pour garantir que les exigences énoncées dans la demande de propositions ont été respectées, que les ressources affectées à l'évaluation étaient adéquates, et que la recommandation finale de l'équipe d'évaluation était conforme aux critères et au processus d'évaluation établis²¹⁶.

Dans leur rapport de surveillance, daté du 26 octobre 1992, les vérificateurs constatent que :

- le Comité d'évaluation des propositions (CEP) a pris toutes les dispositions possibles pour assurer le contrôle et la confidentialité des documents;
- le CEP a respecté les procédures, les critères d'évaluation et le système de notation établis;
- les représentants du secteur privé ont été effectivement associés au travail du CEP;
- le CEP a tenu compte de tous les avis du ministère de la Justice.

Dans leur rapport de vérification du processus, en date du 18 septembre 1992 mais présenté, sous sa forme définitive, le 26 octobre, les vérificateurs constatent que :

- les documents d'évaluation étaient conformes aux exigences de la demande de propositions;
- les ressources affectées à l'évaluation étaient adéquates;
- la recommandation finale était conforme au processus d'évaluation prévu.

M. Robert L'Abbé, qui dirigeait l'équipe de Robert, Chabot, Martin, Paré, a indiqué au comité, en parlant du travail des vérificateurs, qu'ils ont examiné, pour plus de précaution, l'application des critères d'évaluation. Chaque fois qu'une divergence possible dans le travail de l'un ou l'autre des évaluateurs était décelée, les vérificateurs en ont évalué l'impact

²¹⁵ Voir le *Rapport de l'équipe d'évaluation*.

²¹⁶ *Rapport des vérificateurs*, 18 septembre 1992, document du comité LA 001400; *Activités de surveillance du projet de réaménagement des aéroports*, 26 octobre 1992, document du comité LA 001420.

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éventuel sur le résultat. M. L'Abbé a ainsi pu donner l'assurance qu'aucune divergence n'aurait eu d'incidence sur les cotes globales et confirmer la conclusion du comité d'évaluation²¹⁷.

Les vérificateurs ont aussi évalué l'impact des frais imputés aux lignes aériennes sur les recettes prévues dans les propositions. Le but était de voir si l'élimination des frais que Paxport, mais pas Claridge, proposait d'imposer aux lignes aériennes aurait changé le résultat de l'évaluation. On en a conclu que la viabilité financière de la proposition de Paxport ne dépendait pas des frais imputés aux lignes aériennes. Les opérations produiraient suffisamment de capitaux autogénérés, même en l'absence de ces frais, pour acquitter le loyer proposé à l'État. Quoiqu'ils n'aient pas été chargés d'évaluer les propositions, les vérificateurs concluaient, dans leur analyse financière, que la structure de la proposition de Paxport était :

(...) passablement plus intéressante pour l'État que celle de l'ATDG. En réalité, le montant fixe et le taux de rendement qui constituent le loyer sont bien plus élevés que ce que pourrait être le loyer proposé par l'ATG²¹⁸.

C) Le rapport Edlund-Curran

L'étape suivante dans la série des événements qui ont mené à l'annonce du choix de la meilleure proposition acceptable comportait une forme d'intervention politique. Il est intéressant de constater qu'elle a eu pour effet de ralentir la prise de décisions, au lieu d'en accélérer le rythme, et mis de nouveaux bâtons dans les roues de la proposition de Paxport, au lieu de lui aplanir la voie.

Selon M. Harry Swain, sous-ministre de l'Industrie à l'époque, les négociations relatives à l'aéroport Pearson préoccupaient de plus en plus M. Michael Wilson à l'automne de 1992. En tant que principal ministre de la région de Toronto, celui-ci siégeait au comité interministériel créé en vue d'obtenir la participation des ministres dont le mandat était lié au projet d'aménagement des aérogares 1 et 2. Les inquiétudes de M. Wilson portaient en particulier sur la capacité financière des proposants à réaliser les plans d'aménagement proposés, étant donné la longue période en cause²¹⁹.

Par conséquent, M. Swain s'est entendu avec la sous-ministre des Transports, M^{me} Labelle, pour que deux fonctionnaires de l'Industrie se rendent à Toronto pour examiner

²¹⁷ Voir *Délibérations*, 7:54.

²¹⁸ Annexe 2, *Utilisation du modèle financier, Rapport des vérificateurs*; voir aussi *Délibérations*, 7:65-66.

²¹⁹ Voir *Délibérations*, 7:5.

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l'ensemble des documents relatifs aux propositions et à l'évaluation. Ces fonctionnaires, M^{me} Connie Edlund (comptable agréée) et M. Al Curran présentèrent un rapport à M. Swain le 9 novembre 1992²²⁰. Leur étude était le fruit de deux jours de cueillette d'informations sur place, à Toronto, et d'environ deux semaines d'examen et d'analyse à Ottawa à la fin octobre 1992²²¹.

Le rapport Edlund et Curran s'est concentré sur les questions financières, nous a-t-on dit, à cause du peu de temps dont les auteurs disposaient. Il a surtout permis de déterminer que, sur le plan de la viabilité financière, la proposition de Claridge était préférable, étant donné les diverses préoccupations que soulevait celle de Paxport. Les auteurs ont notamment constaté que les capitaux propres engagés (66,5 millions) «semblaient insuffisants» et ne représentaient que 8 p. 100 de l'ensemble des capitaux requis par rapport à un investissement de 130 millions (33 p. 100 des capitaux requis) assuré par Claridge²²². Paxport envisageait par ailleurs d'injecter 40 autres millions grâce à la vente d'actions au public en 1996, ce qui, de l'avis de M^{me} Edlund, demeurait en deçà des niveaux souhaitables. Les deux fonctionnaires doutaient également de la possibilité pour l'entreprise d'obtenir ces capitaux additionnels, bien qu'une déclaration de Wood Gundy indiquant que Paxport «ne devrait pas avoir de difficulté induite à emprunter l'argent nécessaire» les ait rassurés quelque peu²²³.

La proposition de Paxport comptait fortement, selon M^{me} Edlund, sur les fonds autogénérés pour financer les travaux et assurer le rendement prévu aux actionnaires, soit 10 p. 100 dès le départ. Les recettes projetées dans la proposition étaient toutefois «trop optimistes» aux yeux des fonctionnaires d'Industrie Canada²²⁴. On est particulièrement préoccupé par le plan de renégociation à la hausse des baux et des redevances de concessions qui, selon le rapport, représente une «tâche titanesque» pour persuader les compagnies aériennes et autres intéressés à accepter d'absorber des hausses considérables²²⁵.

Par ailleurs, en examinant la situation financière des partenaires de Paxport, des doutes sont nés dans l'esprit de M^{me} Edlund et de M. Curran, quant à l'aptitude de ceux-ci à combler l'écart advenant des dépassements de coûts, des recettes inférieures aux prévisions, ou des problèmes pour l'émission des actions. La situation du groupe Matthews, le principal

²²⁰ Voir *Délibérations*, 7:13.

²²¹ Voir *Délibérations*, 7:31.

²²² Voir *Délibérations*, 7:7.

²²³ Voir *Délibérations*, 7:19.

²²⁴ Voir *Délibérations*, 7:6.

²²⁵ Voir *Délibérations*, 7:19.

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actionnaire de Paxport, était particulièrement inquiétante²²⁶. Son niveau d'endettement de 250 millions était jugé trop élevé, aucune reprise n'étant prévisible pour l'immédiat dans ses principaux secteurs d'activité²²⁷.

Le rapport aborde enfin la question des honoraires de gestion dans chaque proposition²²⁸. Il constate que les honoraires de gestion prévus par Paxport «semblent élevés»²²⁹. Les honoraires de gestion de Claridge plafonnait à environ 15 p. 100, selon les auteurs, tandis que ceux de Paxport passeraient de 24 p. 100 en 1993 à 42 p. 100 en 1998, pour se stabiliser par la suite. Tout en considérant les honoraires de Claridge comme «assez raisonnables», les auteurs décrivent ceux de Paxport en des termes nettement négatifs : «Lorsqu'on les considère dans le contexte des dividendes élevés exigés par l'actionnaire, toutefois, ils sont peut-être un signe de rapacité»²³⁰. M. Swain a par la suite porté un jugement peut-être plus sévère encore en décrivant les honoraires de 15 p. 100 prévus par Claridge comme «déjà très élevés» et en indiquant que des honoraires de l'ordre de 5 à 8 p. 100 seraient plus raisonnables pour un projet de ce genre²³¹.

La conclusion suivante semble être l'aspect le plus positif de l'étude : si toutes les prévisions de Paxport s'avèrent, les loyers versés à l'État seraient «sensiblement plus élevés» que ceux proposés par Claridge, soit trois fois supérieurs pendant la période des travaux et deux fois plus élevés par la suite²³².

D'après M. Swain, l'étude a été communiquée à la sous-ministre des Transports, M^{me} Labelle, et à M. Shortliffe, devenu greffier du Conseil privé. Le ministère de l'Industrie n'a ni sollicité ni obtenu de commentaires sur l'étude, ni d'informations sur son utilisation éventuelle²³³. Bien que nous n'ayons pas entendu de témoignages portant directement sur ce que le ministère des Transports a fait du rapport Edlund-Curran, celui-ci a été remis en question au cours de nos audiences par deux analystes financiers expérimentés.

²²⁶ Voir *Délibérations*, 7:7.

²²⁷ Voir *Délibérations*, 7:18.

²²⁸ Voir *Délibérations*, 7:23 et 7:42.

²²⁹ Voir *Délibérations*, 7:7.

²³⁰ Voir *Délibérations*, 7:10.

²³¹ Voir *Délibérations*, 7:24.

²³² Voir *Délibérations*, 7:6.

²³³ Voir *Délibérations*, 7:44.

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Par exemple, selon M. Keith Joliffe qui, en sa qualité de directeur de la Planification ministérielle et des projets spéciaux, a agi comme conseiller financier à diverses étapes du projet, le rapport Edlund-Curran n'a peut-être pas fourni de données concluantes sur les honoraires de gestion prévus par Paxport. Aux dires de M. Joliffe, le chiffre de 42 p. 100 cité dans le rapport témoigne d'une comparaison boiteuse, puisque les honoraires de gestion sont présentés uniquement par rapport à un seul élément des frais généraux. Si ces honoraires avaient été exprimés en pourcentage de l'ensemble des coûts de fonctionnement et d'entretien, ils se seraient situés aux alentours de 10 p. 100, soit tout à fait dans la fourchette acceptable pour les honoraires de gestion généraux.

M. Stehelin de Deloitte & Touche, qui a agi comme conseiller financier auprès du Ministère une fois choisie la meilleure proposition globale, nous a également informés que le calcul était faux. Selon lui, les honoraires de gestion de Paxport auraient atteint 4 ou 5 p. 100 des recettes brutes, soit un niveau normal dans l'industrie.

Il semble, après coup, que le rapport Edlund-Curran n'ait pas constitué une base valable pour rejeter la recommandation issue du processus d'évaluation du Ministère. En effet, réalisé dans un délai très court, il portait uniquement sur un seul des six critères ayant servi au processus d'évaluation ministériel suivi afin de tenir compte de toutes les principales implications des propositions. Il aurait mieux convenu de se servir du rapport pour recenser les éventuelles préoccupations dans un champ très restreint.

Les principales préoccupations soulevées par le rapport Edlund-Curran se sont reflétées dans la liste des questions qui ont orienté les négociations dans les mois qui ont suivi. La principale question, soit le financement, devait, selon l'annonce, être la première abordée lors des discussions et, comme nous le verrons, elle a été soumise à un examen rigoureux aux étapes ultérieures du processus. Les négociations ont aussi porté sur des questions ponctuelles comme les honoraires de gestion demandés par le promoteur.

D) Les lobbyistes

Dans l'ensemble, comme nous l'avons vu, les lobbyistes ont surtout cherché à consolider l'appui des intervenants pour leurs propositions pendant le processus d'évaluation. Cette activité s'est poursuivie pendant la période précédant l'annonce, tout comme les démarches pour savoir ce qui se passait au Ministère.

Toutefois, ce n'est que la semaine avant l'annonce que les lobbyistes de Claridge ont commencé à capter des rumeurs à Ottawa voulant que le gouvernement soit sur le point

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d'annoncer sa décision et que le choix favorisait Paxport²³⁴. D'après M. Near, au cours de la fin de semaine qui a précédé l'annonce, Earnscliffe et Claridge ont mis au point une stratégie visant à persuader le gouvernement d'adopter des exigences aussi rigoureuses que possible pour obliger l'adjudicataire à faire la preuve de sa capacité de financement. Cette optique allait dans le sens des démarches de Claridge, plus tôt au cours de l'automne, et témoignait de la conviction que sa proposition pourrait éclipser celle de Paxport si l'on attachait suffisamment d'importance aux exigences financières²³⁵.

La stratégie d'Earnscliffe/Claridge prit la forme immédiate d'une note, adressée à M. Shortliffe par télécopieur tôt le matin du 7 décembre 1992, qui énonçait, dans un projet d'annonce, une série d'exigences à imposer à l'adjudicataire. Celles-ci comprenaient le dépôt par Paxport de 100 millions de dollars au 31 décembre 1992 et la conclusion d'une entente de principe avec Air Canada, à la même date, sur de nouvelles conditions de location conformes à la proposition. Le gouvernement aurait aussi annoncé le transfert de 3 millions de passagers de l'aérogare 1 à l'aérogare 3 et se serait engagé à entreprendre, advenant une défaillance de Paxport, des négociations avec Claridge²³⁶. Or, il n'a retenu aucune de ces suggestions.

6. Annonce de la meilleure proposition acceptable

Tout au long de novembre 1992, les discussions se sont poursuivies pour savoir s'il fallait procéder à l'annonce de la meilleure proposition acceptable²³⁷. Plusieurs considérations ont alors été pesées, dont le sentiment des dirigeants de Transports Canada que l'impact de la récession sur le trafic voyageurs reportait à 1996 la nécessité des travaux, le report du début des travaux à cause de la nécessité de négocier de nouveaux baux avec les lignes aériennes, le sursis demandé par Air Canada, et la possibilité que le gouvernement de l'Ontario demande de retarder le tout jusqu'à la création d'une administration aéroportuaire locale²³⁸.

De crainte de divulguer des secrets du Cabinet, le ministre Corbeil s'est borné dans son récit des décisions prises à cette étape à nous donner un aperçu général. Il a mentionné toutefois que la décision d'aller de l'avant après la sélection de la meilleure proposition acceptable appartient normalement au Cabinet, plutôt qu'au ministre seul, et que l'on n'a pas

²³⁴ Voir *Délibérations*, 15:94.

²³⁵ Voir *Délibérations*, 15:97.

²³⁶ Voir *Délibérations*, 15:96-97.

²³⁷ Voir *Délibérations*, 24:65.

²³⁸ Voir *Délibérations*, 24:64 et document du comité LA 002188.

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dérogé à cette habitude dans le cas de l'aéroport Pearson²³⁹. Il a aussi insisté sur la confiance que lui inspirait le processus d'évaluation qui a mené à la recommandation de sélectionner Paxport. À moins d'arrêter complètement à ce stade le projet de réaménagement des aéroports, il aurait été inadmissible, à son avis, de ne pas suivre cette recommandation²⁴⁰.

Il a donc été décidé d'annoncer publiquement la sélection de la meilleure proposition acceptable. Le ministre Corbeil a profité de l'occasion pour indiquer en quoi consistaient les travaux envisagés et pour insister sur l'importance économique de l'aéroport Pearson et sur l'impulsion immédiate qui en résulterait pour l'industrie de la construction à Toronto. On estimait que 3 200 emplois directs et indirects seraient créés pendant la période des travaux et que la présence d'un aéroport de classe internationale continuerait d'avoir des retombées économiques en attirant plus de congrès et en stimulant le tourisme.

Dans son annonce, le gouvernement se disait également préoccupé par les nouvelles réalités financières de l'industrie du transport aérien. Il indiquait que Paxport devrait le convaincre de sa capacité de financer sa proposition avant que ne commencent les négociations nécessaires pour conclure un accord en bonne et due forme²⁴¹.

7. Observations et conclusions

A) Le processus

Comme aux autres étapes du processus, nous avons systématiquement demandé aux fonctionnaires qui ont eu un rôle important à jouer dans la sélection de nous donner leur avis sur le processus et de nous dire en particulier si l'obligation de faire vite avait nui à leur travail, s'ils avaient fait l'objet d'ingérences politiques dans leur travail, si les lobbyistes avaient influencé leurs décisions ou étaient intervenus indûment dans ce dossier, et si, de façon générale, ils étaient convaincus que le processus s'était déroulé régulièrement.

Tous les responsables, sans exception, ont répondu du processus auquel ils avaient pris part. Le ministre des Transports de l'époque, M. Jean Corbeil²⁴², la sous-ministre, M^{me} Huguette Labelle²⁴³, le sous-ministre adjoint responsable des Aéroports,

²³⁹ Voir *Délibérations*, 21:15.

²⁴⁰ Voir *Délibérations*, 21:68.

²⁴¹ Transports Canada, Communiqué, «La meilleure proposition acceptable pour le réaménagement des aéroports 1 et 2 de l'Aéroport international Lester B. Pearson rendue publique,» n° 189/92, le 7 décembre 1992.

²⁴² Voir *Délibérations*, 21:10, 21:65, 21:68 et 21:97.

²⁴³ Voir *Délibérations*, 8:40.

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Victor Barbeau²⁴⁴, et le président du comité d'évaluation et responsable de l'élaboration des critères d'évaluation, M. Ron Lane²⁴⁵, ont tous entériné le processus d'évaluation et les activités subséquentes au Ministère, jusqu'à l'annonce du choix de la meilleure proposition globale.

Le processus a également été avalisé par le greffier du Conseil privé de l'époque, M. Glen Shortliffe²⁴⁶, par M. William Rowat, associé au projet en tant que secrétaire adjoint du Cabinet, Développement économique et régional, au Bureau du Conseil privé²⁴⁷, par M. Mel Cappe, principal intervenant du Conseil du Trésor²⁴⁸, par M. Robert L'Abbé, vérificateur et contrôleur du processus d'évaluation²⁴⁹, et par M. John Simke, représentant la firme Price Waterhouse chargée d'appuyer le processus d'évaluation après avoir collaboré à la préparation de la demande de propositions²⁵⁰.

Nous avons posé les mêmes questions aux employés qui faisaient partie des équipes dirigées par les personnes que nous venons d'énumérer. La constatation est la même : chacun estime que les règles établies et les normes de la fonction publique avaient été pleinement respectées.

Au cours de nos audiences, nous n'avons rien trouvé qui aille à l'encontre de la conviction de tous les participants, quant à l'intégrité totale du processus, depuis la réception et l'évaluation des propositions jusqu'à la sélection et l'annonce de la meilleure proposition acceptable. Comme aux étapes antérieures, toutes les mesures nécessaires pour faire en sorte que les intérêts privés ne l'emportent pas sur l'intérêt public, tel que perçu par les représentants du peuple démocratiquement élus, ont été prises tout au long de cette phase du processus.

²⁴⁴ Voir *Délibérations*, 3:42.

²⁴⁵ Voir *Délibérations*, 6:80.

²⁴⁶ Voir *Délibérations*, 24:105.

²⁴⁷ Voir *Délibérations*, 11:30-31.

²⁴⁸ Voir *Délibérations*, 14:60.

²⁴⁹ Voir *Délibérations*, 6:58.

²⁵⁰ Voir *Délibérations*, 15:13.

B) La politique

Le grand enjeu de cette phase du processus fut l'annonce de la meilleure proposition globale. Cela soulève deux questions distinctes que nous examinons ci-après.

i) Feu vert ou feu rouge?

En premier lieu, il fallait examiner l'annonce de la décision à la lumière des circonstances de l'époque, comme cela a été fait dans le chapitre précédent à propos de la décision de publier une demande de propositions. Il est possible que d'importants changements de circonstances survenus dans les quelque huit mois écoulés entre la demande de propositions et la décision d'annoncer la meilleure proposition acceptable aient pu inciter à renoncer au réaménagement ou à chercher d'autres façons de faire.

Comme nous l'avons vu, les hauts fonctionnaires de Transports Canada ont fait valoir un certain nombre de considérations relativement à la question de savoir s'il fallait aller de l'avant ou non, et le Cabinet a tranché. Or, nos constatations nous portent à appuyer entièrement la décision d'annoncer la meilleure proposition acceptable.

Transports Canada a reconnu les préoccupations des lignes aériennes au sujet du rythme des travaux et des augmentations de coûts à absorber. Mais pas plus en mars qu'en novembre 1992, ces préoccupations ne justifiaient l'interruption du projet. D'ailleurs, les lignes aériennes, en exigeant un report, reconnaissaient la nécessité du réaménagement, leur seul souci étant que le prix en soit abordable.

En mars 1992, pour apaiser les craintes des compagnies aériennes, on a décidé, logiquement, d'intégrer certaines conditions dans la demande de propositions : les coûts imposés aux lignes aériennes ne seraient pas excessifs et les travaux se dérouleraient à un rythme et à prix qui leur conviennent, ainsi qu'aux autres locataires. En novembre 1992, la réaction logique a été de vérifier si la meilleure proposition acceptable respectait ces conditions, et de noter toute préoccupation subsistant encore afin de la régler lors des négociations.

Le gouvernement fit exactement ce qui s'imposait logiquement. Comme nous l'avons vu, en octobre 1992, la firme Raymond, Chabot, Martin, Paré s'est assurée que le processus d'évaluation découlant des conditions de la demande de propositions avait été suivi. Les questions qui subsistaient touchant la situation financière des compagnies aériennes furent clairement indiquées dans l'annonce de la meilleure proposition acceptable. Le gouvernement a agi de manière à répondre en tous points aux préoccupations réelles des lignes aériennes à l'automne de 1992, ce qui a permis à Air Canada de conclure en toute liberté un accord avec les promoteurs pour que les travaux commencent l'année suivante.

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En novembre 1992, la création d'une administration aéroportuaire locale en était au même point qu'avant la publication de la demande de propositions. Aucun candidat viable ne se manifestait et il semblait peu probable qu'une administration soit formée, malgré l'impulsion donnée par la demande de propositions. En fait, entre le moment de la demande de propositions et celui de l'annonce de la meilleure proposition globale, la situation de l'administration aéroportuaire locale est devenue de plus en plus floue. Durant cette période, des candidats rivaux sont apparus dans la région torontoise et la mairesse de Mississauga a continué de suivre sa propre voie sur la question du réaménagement. Confier le réaménagement à une administration aéroportuaire locale n'était pas plus envisageable en novembre 1992 qu'en mars de la même année.

Comme en mars, toute décision d'attendre la création d'une administration aéroportuaire locale pour effectuer la modernisation aurait suscité de vives critiques de la part de la mairesse de la municipalité où était situé l'aéroport Pearson; la dirigeante municipale réclamait en effet soit la rénovation, soit la fermeture de l'aérogare 1. Le report aurait aussi été à l'encontre de la volonté du Ministre qui était convaincu, à juste titre, du besoin impérieux de la modernisation (particulièrement de l'aérogare 1). Le gouvernement aurait alors donné prise à des critiques légitimes selon lesquelles les intérêts de la population étaient sacrifiés à la volonté d'une infime minorité, très active, qui voulait diriger l'aéroport Pearson au moyen d'une administration locale.

ii) Quelle proposition choisir?

Une deuxième solution s'offrait au gouvernement : amorcer le réaménagement mais laisser de côté ou rejeter les constatations du comité d'évaluation. Le ministre Corbeil jugeait extrêmement périlleux d'intervenir dans un processus qui était devenu essentiellement l'affaire des fonctionnaires, sous réserve de quelques approbations données par les élus à des moments charnières.

En outre, l'annonce de la meilleure proposition acceptable ne supposait pas le rejet irréversible de la proposition non retenue. Comme nous l'ont assuré à maintes reprises les hauts fonctionnaires et les représentants de Claridge, la proposition de Claridge est restée sur la table. Pendant les discussions non officielles qui ont suivi l'annonce de la meilleure proposition acceptable, la proposition de Claridge, jugée aussi acceptable par le comité d'évaluation et retenue comme option par le gouvernement, a donné à ce dernier une plus grande marge de manoeuvre dans ses négociations avec Paxport.

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Ainsi, en annonçant que Paxport avait présenté la meilleure proposition acceptable, le gouvernement s'était engagé à passer à l'étape suivante du processus²⁵¹.

Nous en concluons, dans l'ensemble, qu'entre le 16 mars et le 7 décembre 1992, le ministère des Transports a appliqué un processus d'évaluation d'une rigoureuse équité et que l'annonce en décembre 1992 de la meilleure proposition acceptable était non seulement conforme à l'intérêt public, mais qu'elle s'imposait.

²⁵¹ Étant donné que la réponse du proposant à la demande de propositions constituait en soi une offre irrévocable pour une période de 18 mois, on pourrait soutenir que la lettre du 7 décembre 1992 de Victor Barbeau à Paxport constituait une acceptation conditionnelle de cette offre irrévocable, ce qui obligeait le gouvernement à aller de l'avant et traiter avec les proposants pour satisfaire aux conditions.

«Chacun a mis un peu d'eau dans son vin.»

William Rowat

Négociateur du gouvernement

Une fois la meilleure proposition globale choisie, la tâche principale du gouvernement et du proposant retenu consistait à négocier une entente précisant dans les détails toutes les modalités d'un accord. Ce processus s'est déroulé en deux phases.

Durant la première phase, soit du 8 décembre 1992 au 5 mai 1993, des fonctionnaires fédéraux ont rencontré des représentants de Paxport pour discuter des questions à régler, selon l'annonce publique du ministre, avant d'amorcer les négociations. C'est durant cette période que s'est produit un événement important, à savoir l'association de Paxport et d'ATDG dans une coentreprise, laquelle a ensuite pris le relais des négociations avec le gouvernement.

Durant la seconde phase, qui a duré du 5 mai au 7 octobre 1993, des ententes détaillées ont été négociées, signées et (une fois les dernières conditions remplies par les promoteurs) retirées des mains du tiers. L'existence des «principes directeurs» établis en 1989 dans le bail emphytéotique qu'Air Canada prétendait être un accord entre elle et le gouvernement, que les promoteurs et les négociateurs ont apprise durant cette phase, allait considérablement compliquer les négociations. Autre complication, les accords Pearson ont suscité une vive polémique dans les milieux politiques, en particulier à partir de l'émission des brefs d'élection le 8 septembre 1993.

Cette phase se caractérisait aussi par le rôle accru des organismes centraux. Le Bureau du Conseil privé supervisait les opérations comme il l'avait fait durant les phases antérieures, mais il a aussi joué un rôle de facilitateur à certains moments importants. Conformément à son mandat, le rôle du Secrétariat du Conseil du Trésor consistait à passer une première fois au crible les projets d'accord, comme le feront ensuite une seconde fois les ministres du Conseil du Trésor.

1. Les acteurs - Introduction au processus

Chez Paxport, au lendemain de l'annonce, de la meilleure proposition globale, soit le 7 décembre 1992, le rôle de M. Hession est devenu celui de conseiller. En matière de négociations, il s'est ensuite occupé du plan de transfert des employés et du plan des retombées industrielles, mais sa responsabilité première portait sur le développement des marchés internationaux. La responsabilité globale de la négociation des accords Pearson est revenue à M. Jack Matthews, qui avait été nommé président-directeur général en septembre 1992²⁵².

Au Ministère, selon la sous-ministre de l'époque, M^{me} Huguette Labelle, M. Victor Barbeau, en sa qualité de sous-ministre adjoint chargé des Aéroports, était déjà fort occupé par plusieurs dossiers pressants concernant la gestion des aéroports. Il avait donc recommandé la nomination d'un négociateur en chef à plein temps pour coordonner le processus au Ministère. Le ministre de l'époque, M. Jean Corbeil, a accueilli favorablement cette suggestion²⁵³.

M^{me} Labelle a demandé à M. Ranald Quail, alors sous-ministre associé des Transports, de servir de négociateur en chef, et celui-ci a exercé cette fonction du début de janvier 1993 jusqu'à sa nomination au poste de sous-ministre des Travaux publics le 12 février 1993²⁵⁴. À ce moment-là, après avoir consulté le BCP et d'autres personnes, M^{me} Labelle a retenu les services de M. Donald Broadbent, un ancien sous-ministre des Anciens combattants qui avait pris sa retraite l'année précédente. Il a été négociateur en chef jusqu'après le début des négociations officielles.

Les choses suivaient leur cours au printemps de 1993, mais des tensions seraient survenues entre M. Broadbent et le Groupe des aéroports de Transports Canada, auquel les promoteurs reprochait la lenteur des négociations. C'est pour ces raisons, a dit M^{me} Labelle, que M. Barbeau (sous-ministre adjoint responsable du Groupe des aéroports) et elle-même ont convenu qu'il valait mieux qu'il se retire momentanément pour éviter que l'on s'en prenne à lui. Le 27 mai 1993, M. Barbeau a pris un congé d'environ cinq semaines, durant lequel il a été remplacé par M. Farquhar à titre intérimaire²⁵⁵.

²⁵² Voir *Délibérations*, 9:40.

²⁵³ Voir *Délibérations*, 8:80.

²⁵⁴ Voir *Délibérations*, 15:46.

²⁵⁵ Voir *Délibérations*, 8:9-10.

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Il devenait alors évident que les négociations ne seraient pas terminées à la fin de mai. M^{me} Labelle et M. Broadbent ont donc discuté de l'opportunité pour ce dernier de continuer d'agir comme négociateur en chef au-delà de l'échéance initiale. Selon elle, l'idée n'enchantait pas M. Broadbent et, comme M. Bill Rowat, qui connaissait bien le dossier et était sur le point d'être nommé sous-ministre associé au Ministère, était libre, on n'a pas invité M. Broadbent à renouveler son contrat²⁵⁶. M. Broadbent donne une version un peu différente de ses intentions. Il nous a dit qu'il avait été handicapé dans son travail à cause de l'insuffisance de l'appui qu'il avait reçu des fonctionnaires du Ministère et qu'il avait été pris de court par des événements imprévus, que l'on décrira plus loin²⁵⁷.

C'est ainsi que, le 15 juin 1993, M. Bill Rowat a assumé les fonctions de négociateur en chef, immédiatement après sa nomination au poste de sous-ministre associé des Transports.

Le dernier changement de distribution a eu lieu le 25 juin 1993 dans le cadre d'un remaniement touchant quelque 21 sous-ministres qui coïncidait avec une grande restructuration gouvernementale et la nomination d'un nouveau cabinet par la première ministre Kim Campbell. M^{me} Jocelyne Bourgon est devenue sous-ministres des Transports, après quatre mois et demi à la tête de l'Agence canadienne de développement international, où Mme Labelle lui a succédé. D'après M. Glen Shortliffe, qui était, en sa qualité de greffier du Conseil privé à l'époque, le premier responsable des hauts fonctionnaires, il n'avait ni reçu d'instruction de procéder à cette permutation, ni fait l'objet de pressions en ce sens²⁵⁸.

Que des changements de personnel se produisent durant un processus aussi long que celui qui a abouti à la signature des accords Pearson n'a rien d'étonnant. Nous tenions cependant à nous assurer que les changements signalés n'étaient pas motivés par des considérations qui risqueraient de semer le doute sur l'intégrité du processus. Les personnes concernées nous ont affirmé que personne n'est parti pour cause de refus de continuer à travailler au projet de réaménagement de l'aéroport Pearson ou pour cause d'incompétence dans l'exécution de ses tâches. À l'exception du congé de M. Barbeau, qui n'est que le déplacement temporaire d'un fonctionnaire que ses collègues jugent extrêmement compétent et dévoué, les départs tenaient à des considérations professionnelles normales et ne sortaient en rien de l'ordinaire compte tenu du nombre de personnes en cause et de la durée du processus.

²⁵⁶ Voir *Délibérations*, 8:44.

²⁵⁷ Voir *Délibérations*, 9:98.

²⁵⁸ Voir *Délibérations*, 24:88.

2. Problèmes à régler avant les négociations

A) Le gouvernement et Paxport

Dans une lettre datée du 7 décembre 1992, le jour de l'annonce de la meilleure proposition globale, le sous-ministre adjoint chargé des aéroports, M. Victor Barbeau, informait officiellement Paxport que sa proposition avait été retenue. Il signalait par ailleurs des dispositions de la proposition de Paxport jugées inacceptables en totalité ou en partie, et qu'il faudrait revoir au cours des négociations. Nous avons finalement appris que le Ministère avait fait dresser une liste d'environ 55 points à examiner en vue des pourparlers²⁵⁹.

La lettre faisait aussi état de deux problèmes qu'il fallait régler avant le début des négociations proprement dites :

D'autre part, l'évolution de la situation financière des lignes aériennes inspire de nouvelles inquiétudes au gouvernement, au sujet de la capacité de financement de votre proposition notamment.

Nous sommes disposés à entrer en négociation en vue de conclure un accord dans le cadre de la demande de propositions à condition que :

- 1) des changements exigés par le ministre soient apportés à votre proposition pour répondre aux inquiétudes du gouvernement; et
- 2) vous puissiez démontrer à la satisfaction du gouvernement d'ici au 15 février 1993 que le financement de votre proposition est réalisable dans les circonstances²⁶⁰.

Paxport avait jusqu'au 10 décembre 1992 pour faire savoir au gouvernement si elle acceptait les conditions énoncées dans la lettre, y compris le besoin de reconnaître que la récession pesait sur la capacité des lignes aériennes d'absorber des majorations de coûts et la nécessité d'établir sa capacité de financement, ce qu'elle semble avoir fait.

Selon M. John Desmarais, conseiller principal du sous-ministre adjoint chargé du Groupe des aéroports, qui a participé à tout le processus, l'allusion à la situation changeante au sein de l'aviation commerciale venait de la possibilité — tout à fait vraisemblable à l'époque — d'une fusion d'Air Canada et des Lignes aériennes Canadien International. On

²⁵⁹ Voir *Délibérations*, 15:58.

²⁶⁰ Voir *Délibérations*, 11:75.

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voulait essentiellement indiquer que Paxport devrait consulter les compagnies aériennes pour savoir qui utiliserait les aérogares en fin de compte et quels seraient ses besoins²⁶¹.

Pour ce qui de la nécessité de démontrer la capacité de financement de la proposition, la demande de propositions stipulait qu'une telle preuve serait exigée après l'annonce de la meilleure proposition globale²⁶². C'était, d'après plusieurs fonctionnaires, une étape normale de l'évaluation finale. Selon M. Keith Jolliffe, conseiller financier du Groupe Aviation à Transports Canada, qui a participé à l'évaluation des propositions et aux négociations qui ont suivi, la production d'une preuve de la capacité de financement tenait aussi à la nature du processus d'évaluation, lequel était axé sur les projections financières contenues dans les deux propositions. En se fondant sur la situation financière des partenaires du proposant et de la volonté démontrée des prêteurs de fournir les capitaux requis, la proposition gagnante devait, à l'issue du processus, franchir l'épreuve de la réalité financière²⁶³.

M. Hession dit avoir discuté pour la première fois de ce qui constituerait une démonstration probante de la capacité de financement du proposant (au-delà de ce qui était exigé dans la demande) avec M. Barbeau à Ottawa le 15 décembre 1992²⁶⁴. On lui aurait dit que les fonctionnaires du Ministère n'allaient pas définir les exigences mais que, une fois les informations pertinentes soumises, un expert financier embauché par le Ministère les analyserait et porterait un jugement. Cette version semble confirmée par une lettre de suivi adressée à M. Hession en date du 22 décembre 1992, où M. Barbeau écrit : «(...) il n'est nullement dans notre intention de définir ce qui constituerait une preuve de votre capacité de financement que le gouvernement jugerait acceptable»²⁶⁵.

M. Hession n'a pas mâché ses mots pour critiquer la démarche de Transports Canada, qui lui aurait fait perdre au moins deux mois, au sujet de l'établissement de la capacité de financement. C'est qu'on avait dû retenir les services de la firme Deloitte & Touche en janvier 1993 pour évaluer le financement du projet de Paxport²⁶⁶.

À la fin de janvier 1993, une équipe de négociation avait été constituée et avait eu un premier contact avec les représentants de Paxport pour faire le point, en particulier sur la question du financement. Selon M. Quail, le noeud de la question consistait à savoir si les

²⁶¹ Voir *Délibérations*, 11:84.

²⁶² Voir *Délibérations*, 6:80-81.

²⁶³ Voir *Délibérations*, 11:85.

²⁶⁴ Voir *Délibérations*, 8:78.

²⁶⁵ Victor Barbeau à Ray Hession, le 22 décembre 1992, Document de comité, LA 000095.

²⁶⁶ Voir *Délibérations*, 15:47.

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exigences des prêteurs éventuels avaient sensiblement changé depuis le moment où la proposition de Paxport avait été formulée et s'ils étaient toujours disposés à fournir les capitaux nécessaires²⁶⁷. Il fallait en outre examiner les conséquences sur la capacité de financement de la proposition du rejet par le gouvernement de certains éléments de la proposition initiale de Paxport.

On a de nouveau discuté de financement et d'autres questions au début de février, cette fois en présence de représentants des firmes Deloitte & Touche et Cassels Brock, cette dernière agissant à titre de conseiller juridique pour les négociations. Le 9 février 1993, M. Jack Matthews a demandé de repousser au 1^{er} mars la date limite de production des preuves de la capacité de financement initialement fixée au 15 février, ce qui lui a été accordé dans une lettre datée du 12 février, le jour où M. Quail est passé aux Travaux publics²⁶⁸.

Pendant cette période, le rôle de M. Paul Stehelin de Deloitte & Touche a pris une importance croissante. Initialement, c'est lui qui a recueilli l'information et donné des avis sur la capacité de financement du proposant. D'après la façon dont il s'est acquitté de ces fonctions, on voit qu'il jouissait d'une très grande latitude dans la formulation des critères d'appréciation de la capacité de financement et qu'il ne s'est pas contenté d'appliquer les critères du Ministère.

M. Stehelin est arrivé à la conclusion que la nature même de la transaction interdisait les garanties sans condition prévues dans la demande de propositions et envisagées par les fonctionnaires. Le marché immobilier de la région métropolitaine de Toronto était sérieusement à la baisse au début de 1993; même si les conditions avaient été plus favorables, aucune institution financière ne se serait engagée sans condition à hauteur de 850 millions de dollars dans un projet étalé sur huit à dix ans, d'autant plus que la santé de l'aviation commerciale suscitait de sérieuses inquiétudes à l'époque. La définition d'un critère de capacité de financement qui offrait une garantie suffisante au gouvernement en tenant compte de la conjoncture faisait donc maintenant elle-même l'objet de discussion.

On a alors envisagé une formule de financement par étapes. Il fallait ainsi examiner à la fois les possibilités de financement à la première étape, et les conditions dans lesquelles les prêteurs seraient disposés à fournir les capitaux nécessaires aux étapes suivantes. Comme il était essentiel, à la deuxième phase, par exemple, que l'augmentation du trafic corresponde aux projections, les inquiétudes inspirées par la conjoncture économique mondiale et la santé de l'industrie du transport aérien n'étaient pas sans fondement.

²⁶⁷ Voir *Délibérations*, 15:60.

²⁶⁸ Voir *Délibérations*, 15:47.

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En plus d'établir des critères, la firme Deloitte & Touche a réuni des données sur la situation financière des partenaires de Paxport, apprenant ainsi que l'apport auquel le groupe Matthews s'était engagé comportait une tranche de 20 millions de dollars provenant d'Allders, un autre partenaire de Paxport, aux termes d'une entente conclue en juin 1992. Cela devait devenir un élément important de discussions par la suite parce que la faillite du groupe Matthews aurait fait d'Allders l'actionnaire majoritaire de Paxport alors que cette société est, en tant que concessionnaire de boutiques hors taxe, un des principaux locataires. Or, le gouvernement avait pour principe qu'un locataire important ne pouvait pas détenir une participation majoritaire dans les aéroports.

Dans une lettre datée du 2 mars 1993, Deloitte & Touche a fait au gouvernement son premier compte rendu officiel sur la capacité de financement de Paxport. La firme a signalé une série de problèmes et affirmé qu'elle ne pouvait pas garantir à l'État que le projet en question pouvait effectivement être financé si ces problèmes n'étaient pas réglés²⁶⁹. Il semble que ce rapport aurait suscité chez Paxport une vive indignation (selon une note du Ministère, on aurait «crié au scandale» et accusé l'administration de faire traîner les choses)²⁷⁰.

Le 15 mars 1993, lorsque M. David Broadbent a assumé les fonctions de négociateur en chef, la capacité de financement de la proposition demeurait encore très contestée. Il fallait, selon M. Broadbent, répondre à quatre questions fondamentales : la capitalisation de Paxport serait-elle considérée comme suffisante par les prêteurs éventuels; les partenaires de Paxport allaient-ils respecter leurs engagements financiers; le groupe Matthews était-il sûr et y avait-il une solution au problème que posait le prêt consenti par Allders; et enfin Air Canada aurait-elle les moyens de payer les loyers plus élevés prévus dans la proposition de Paxport²⁷¹? On a continué de débattre de ces questions avec Paxport durant le mois de mars, mais sans progrès notable.

Il importe de noter que, durant les premiers mois de discussion avec Paxport, les fonctionnaires ont pris soin de faire ressortir que la proposition Claridge avait aussi été jugée acceptable en décembre 1992. Sans faire l'objet de discussions, cette dernière était gardée en réserve au cas où les négociations avec Paxport n'aboutiraient pas. Pour les fonctionnaires, cette stratégie présentait notamment l'avantage de conférer au gouvernement plus de pouvoirs de persuasion pour trouver une solution aux problèmes qu'il fallait régler avant les négociations. Elle convenait aussi aux fonctionnaires du Conseil du Trésor qui ne voulaient pas que l'on entame des négociations en bonne et due forme avec Paxport avant que la question de la capacité de financement ne soit réglée, car on risquait, en dérogeant à la

²⁶⁹ Paul Stehelin à Huguette Labelle, Document de comité, LA 00196, p. 6.

²⁷⁰ Voir *Délibérations*, 13:27.

²⁷¹ Voir *Délibérations*, 9:89.

démarche établie dans la demande de propositions, de pousser Claridge à engager des poursuites.

B) La deuxième voie du gouvernement

D'après les témoins que nous avons entendus, il semblerait que l'éventualité d'une forme d'association de Paxport et de Claridge ait été soulevée dès le mois de novembre 1992. Dans une note au premier ministre Mulroney en date du 16 novembre 1992, le greffier du Conseil privé, Glen Shortliffe, évoque cette possibilité en disant qu'au point où en sont les choses, les chances que l'entreprise se réalise ne semblent pas très bonnes. M. Shortliffe a précisé, devant le Comité, qu'il répondait en cela à une question du Premier ministre, dont M. Charles Bronfman lui avait touché mot lors d'une réception²⁷².

La possibilité d'une fusion devait retenir davantage l'attention des fonctionnaires. M. Shortliffe a laissé entendre que si les fonctionnaires s'y sont intéressés au premier chef c'est surtout à cause des avantages que présenterait un exploitant unique sur le plan opérationnel et non pas à cause de préoccupations quant à la capacité de financement de Paxport²⁷³. L'auteur, non identifié, d'un document du gouvernement qui semble avoir trait à cette période et que nous avons obtenu au cours des dernières audiences, explore certaines options comme la conjugaison de divers éléments des propositions de Paxport et de Claridge, et la possibilité d'amener les deux entreprises à présenter une nouvelle proposition ensemble.

Selon M. Hession, un haut fonctionnaire de Transports Canada avait communiqué avec lui dans les jours qui ont suivi l'annonce de la meilleure offre globale pour recommander que Paxport et Claridge explorent les synergies qui pourraient résulter de la création d'un seul groupe pour exploiter les trois aéroports de Pearson. Dans une lettre qui nous a été transmise après sa comparution, M. Hession affirme qu'il s'agissait de la sous-ministre des Transports de l'époque, Mme Huguette Labelle. Il révèle également que l'appel l'a incité sur-le-champ à suggérer à Don Matthews d'appeler M. Bronfman, non pas pour soulever la question mais pour donner à M. Bronfman l'occasion de le faire.

Selon M. Coughlin, de Claridge Properties, M. Bronfman aurait abordé avec M. Matthews la question d'une association éventuelle peu après l'annonce du 7 décembre, lorsque M. Matthews lui a téléphoné pour le féliciter de l'offre présentée par Claridge²⁷⁴. Claridge suivait ainsi, nous a dit M. Coughlin, un plan de rechange fondé sur la conviction que Paxport était en mesure de remplir les critères financiers du gouvernement. Une fois ces

²⁷² Voir *Délibérations*, 24:65.

²⁷³ Voir *Délibérations*, 9:44 et 9:48.

²⁷⁴ Voir *Délibérations*, 17:12 et 17:20.

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critères satisfaits, Claridge n'aurait plus aucune chance de participer à l'aménagement des aéroports 1 et 2.

L'idée fondamentale à l'origine de la formation de Claridge et de la soumission d'une proposition était la nécessité de participer à l'exploitation des aéroports 1 et 2 pour préserver la rentabilité de l'aéroport 3. Cet objectif est devenu progressivement plus important à mesure que la récession risquait de compromettre la situation financière de Canadien International. Cette compagnie étant le principal locataire de l'aéroport 3, sa faillite aurait immédiatement entraîné la perte de son loyer et le détournement d'une bonne partie des passagers vers les compagnies qui utilisaient les autres aéroports, ce qui aurait aggravé d'autant les conséquences financières pour les propriétaires de l'aéroport 3²⁷⁵. C'est avec cet objectif en tête que Claridge a pris la décision, que M. Coughlin décrit comme une «décision de gestion», de sonder le terrain en vue d'un partenariat éventuel avec Paxport.

La version des événements donnée par M. Matthews concorde avec celle de M. Coughlin. Selon M. Matthews, la conversation initiale qu'il a eue avec M. Bronfman le 9 décembre portait essentiellement sur la nécessité pour les deux sociétés de coopérer durant les travaux. Lors d'une réunion à Toronto le 16 décembre, les deux parties ont convenu d'approfondir la question, ce qui devait mener à de nouvelles discussions sur la possibilité d'une fusion et à la signature, le 14 janvier 1993, d'un engagement ferme à négocier²⁷⁶. La fusion présentait à peu près les mêmes intérêts pour Paxport et pour Claridge : elle donnerait à Paxport une participation dans l'aéroport 3, et en permettrait l'utilisation pendant la construction, ce qui ferait réaliser des économies ponctuelles de quelque 75 millions de dollars de même que des économies annuelles d'environ 4 millions au chapitre du fonctionnement²⁷⁷.

Interrogés à ce sujet, M. Coughlin comme M. Matthews ont affirmé catégoriquement qu'il n'y avait eu aucune communication avec Paxport au sujet de l'éventualité d'une association avant le 7 décembre 1992, ni de pressions en ce sens de la part du Cabinet du Premier ministre ou du Bureau du Conseil privé²⁷⁸.

La version des fonctionnaires du Ministère est dans l'ensemble compatible avec celle des promoteurs. Selon M. Quail, à sa connaissance, c'est seulement à la fin de décembre 1992 qu'on a commencé à parler à Transports Canada de l'éventualité d'une forme de fusion de Paxport et Claridge, mais il a fallu attendre la mi-janvier avant d'en obtenir confirmation.

²⁷⁵ Voir *Délibérations*, 17:19.

²⁷⁶ Voir *Délibérations*, 18:40.

²⁷⁷ Voir *Délibérations*, 18:81.

²⁷⁸ Voir *Délibérations*, 18:79.

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Durant la fin de semaine des 16 et 17 janvier, M. Quail a reçu un appel de M^{me} Labelle lui demandant d'assister le lendemain, lundi 18 janvier, à une rencontre avec des représentants de Paxport et de Claridge. C'est à cette réunion que les fonctionnaires du Ministère ont été mis au courant de la lettre d'entente du 14 janvier 1993 dans laquelle les deux sociétés s'engageaient à entamer des négociations en vue de la création d'une coentreprise initialement appelée Mergeco, et dans laquelle Paxport et Claridge auraient chacune une participation de 50 p. 100. Il a alors été convenu que le projet de coentreprise demeurerait confidentiel jusqu'à ce que les parties aient rempli les engagements stipulés dans la lettre et que la coentreprise se concrétise. Dans l'intervalle, les discussions avec Paxport se poursuivaient²⁷⁹.

Cet événement a eu un effet immédiat sur le déroulement des négociations. Il a d'abord soulevé des questions capitales dans l'esprit des négociateurs du gouvernement. Par exemple, lors de la rencontre du 18 janvier, M. Quail a demandé qu'on fasse connaître l'identité des prêteurs associés à la coentreprise et qu'on confirme que la proposition négociée avec la coentreprise serait celle de Paxport²⁸⁰. Il a été dit clairement que le gouvernement jugerait inacceptable tout écart notable par rapport à la proposition considérée comme la meilleure proposition globale²⁸¹. En outre, à en juger par des notes rédigées après la rencontre du 18 janvier, on se demandait notamment si l'affaire pouvait être négociée, si le processus était «bousillé»²⁸². On reconnaissait également que l'examen de la capacité de financement se situait dans un nouveau contexte;

À ce moment-là, M. Quail a cherché à obtenir un avis juridique sur l'impact d'une fusion sur le processus de négociation; comme le projet de fusion en était encore aux premiers balbutiements, il n'a pu obtenir de réponse définitive avant son départ²⁸³. Il a cependant obtenu l'avis de M. Chern Heed, l'administrateur de l'aéroport Pearson, qui faisait partie de l'équipe de négociation, avis qui aurait été le fruit de discussions avec les autres membres de l'équipe. M. Chern affirme qu'en l'absence de preuve du contraire, la fusion doit être considérée simplement comme une restructuration:

Le fait que le promoteur choisi vende 50 p. 100 de ses droits en tant que «promoteur dont la proposition globale est la plus acceptable» (quels que soient ces droits) n'est pas considéré comme une infraction au processus, sauf

²⁷⁹ Voir *Délibérations*, 15:93.

²⁸⁰ Voir *Délibérations*, 15:94.

²⁸¹ Voir *Délibérations*, 15:95.

²⁸² Voir *délibérations*, 15:68-69.

²⁸³ Voir *délibérations*, 15:70.

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si on peut prouver qu'il y a eu collusion plus tôt dans le processus de proposition, et nous n'avons aucune raison de le faire²⁸⁴.

Vers la fin de janvier 1993, les détails de la coentreprise envisagée par Claridge et Paxport ont commencé à se préciser. Les fonctionnaires du Ministère se sont surtout employés pendant cette période, jusqu'au début de février, à déceler les difficultés éventuelles²⁸⁵.

Selon M. Broadbent, devenu négociateur en chef le 15 février, la stratégie évidente de l'État dans l'affaire Mergeco consistait, en premier lieu, à s'assurer des avantages de la proposition de Paxport (qui comportait un taux de rendement très intéressant pour l'État, et un plan d'aménagement plus avantageux que celui de Claridge), avec l'appui financier des propriétaires de Claridge, les Bronfman²⁸⁶. Sa mission première était non pas de conclure une entente à n'importe quel prix, mais bien de négocier un accord satisfaisant, faute de quoi il faudrait y renoncer²⁸⁷. Le second volet de la stratégie de l'État consistait à prendre en compte la situation financière des compagnies aériennes en structurant les accords de manière à leur éviter des frais initiaux élevés²⁸⁸.

L'équipe Broadbent cherchait à séparer le plus possible les enjeux et à mener les discussions sur des voies parallèles; il serait ainsi possible de faire avancer certains dossiers, comme ceux des questions de personnel et des retombées industrielles, voire même la préparation des avants-projets d'accords, en attendant que, une fois éliminées les «pierres d'achoppement» comme la question de la capacité de financement, les négociations proprement dites puissent commencer²⁸⁹.

M. Broadbent avait reçu comme consigne, apparemment de M^{me} Labelle et M. Shortliffe, de faire avancer les choses rapidement afin que les négociations soient aussi avancées que possible à la fin de mai 1993²⁹⁰. M. Broadbent en a conclu que le gouvernement voulait régler les dossiers en suspens avant le congrès d'investiture en juin, ce qui n'avait rien d'étonnant. Le Premier ministre aurait apparemment fait comprendre à M. Shortliffe qu'il «souhaitait vivement que ce dossier se règle». Selon M. Broadbent, «s'il y avait de la pression

²⁸⁴ Voir *délibérations*, 15:63-64.

²⁸⁵ Voir *délibérations*, 15:47.

²⁸⁶ Voir *délibérations*, 9:89.

²⁸⁷ Voir *délibérations*, 9:90.

²⁸⁸ Voir *délibérations*, 9:110.

²⁸⁹ Voir *délibérations*, 9:91-92.

²⁹⁰ Voir *délibérations*, 9:102.

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de sa part, elle s'arrêtait à Glen Shortliffe. C'était lui le tampon. Il absorbait la pression. Il n'en faisait aucune sur moi»²⁹¹.

L'apparition de Mergeco en a amené plusieurs à se demander si cette nouvelle donne risquait de transformer trop radicalement les paramètres par rapport à celle qui avait été retenue comme étant la meilleure proposition globale. M. Broadbent en a parlé avec la sous-ministre Huguette Labelle, puis avec des fonctionnaires du Bureau du Conseil privé et du Conseil du Trésor qui auraient, selon M. Broadbent, après avoir examiné la situation, donné leur aval²⁹².

En avril et mai, les travaux se sont poursuivis sur une série de questions interreliées, dont plusieurs avaient des répercussions sur les discussions concernant la capacité de financement. Par exemple, comme le gouvernement souhaitait maintenir au minimum les augmentations de coût initiales pour les lignes aériennes, on a examiné des modalités selon lesquelles on ne passerait au stade de réaménagement suivant que lorsqu'on aurait atteint le seuil de trafic voyageurs où il serait rentable de le faire. Vu le désir exprimé par le gouvernement de différer les majorations de coûts pour les lignes aériennes, on a aussi différé pendant une courte période le versement des loyers à l'État, et fait absorber une partie des coûts par les promoteurs durant la période initiale²⁹³.

Durant la période de mars à juin 1993, M. Stehelin, l'expert de Deloitte & Touche en matière de financement, a travaillé à plein temps sur le dossier Pearson. L'association Claridge-Paxport présentait un avantage immédiat : elle éliminait le risque que la faillite éventuelle du groupe Matthews ne place le projet entre les mains d'un des principaux locataires. Comme Paxport ne détiendrait qu'une participation de 50 p. 100 dans Mergeco, même si Allders récupérerait la part du groupe Matthews en cas de défaut de paiement de ce dernier, elle n'aurait pas pour autant le contrôle du projet²⁹⁴.

D'autres questions liées à la détermination de la capacité de financement ont continué d'évoluer. La nécessité de fournir des garanties suffisantes au gouvernement concernant le financement du projet a continué de faire l'objet d'intenses discussions durant avril et mai, même si l'annonce de la coentreprise appuyée par les Bronfman avait atténué sensiblement les inquiétudes d'ordre financier. Les discussions devaient se poursuivre étant donné les liens entre la capacité de financement et d'autres aspects de la proposition.

²⁹¹ Voir *délibérations*, 9:103.

²⁹² Voir *délibérations*, 9:95.

²⁹³ Voir *délibérations*, 10:20, 10:26 et 10:29.

²⁹⁴ Voir *délibérations*, 13:25.

D'après Stehelin et d'autres, le problème qui paraissait à l'époque le plus difficile à surmonter était celui de l'appui d'Air Canada qui, en tant que principal locataire de l'aérogare 2, serait directement touchée par les plans de réaménagement et les coûts qui en découleraient²⁹⁵. Cette question mérite qu'on s'y attarde.

C) Le «sandwich Air Canada»

La demande de propositions exigeait des proposants la garantie qu'Air Canada tirerait avantage de ses investissements récents à l'aérogare 2 pendant une période d'amortissement normale et la négociation d'arrangements précis²⁹⁶. Les discussions se poursuivaient donc entre Air Canada et Paxport qui, dans sa proposition, avait précisé qu'elle procéderait aux travaux de réaménagement seulement lorsqu'un nouveau bail serait conclu avec Air Canada. Le sort de l'entente reposait donc entre les mains d'Air Canada.

Il semble que les discussions qui se sont déroulées entre Air Canada et Paxport au cours des premiers mois de 1993 n'aient pas donné grand-chose²⁹⁷. En fait, lors de la réunion du 3 mars 1993 avec des représentants du ministère des Transports, dont Mme Labelle, Paxport a soutenu que l'absence de négociations officielles minait sa crédibilité auprès d'Air Canada au point où celle-ci refusait toute négociation sérieuse²⁹⁸.

Lorsque M. Broadbent a accepté le rôle de négociateur en chef à la mi-mars, M. Matthews lui a fait part de ses préoccupations. Il se souvient qu'on lui a dit que la société Air Canada se comportait comme si elle avait un droit de veto sur l'entente et que Paxport allait avoir besoin d'aide pour régler cette question²⁹⁹.

Au cours de cette réunion du 3 mars 1993, on a aussi mentionné qu'Air Canada prétendait, dans ses discussions avec Paxport, qu'elle avait avec le gouvernement un bail d'une durée de 60 ans et non un bail expirant en 1997. M^{me} Labelle nous a dit qu'elle connaissait alors depuis au moins un an la position d'Air Canada concernant le document dit des «principes directeurs»³⁰⁰; elle n'a toutefois été informée qu'au printemps de 1993 de la décision de ne pas inclure ce document dans la documentation mise à la disposition des proposants après la publication de la demande de propositions. Cette question semble avoir

²⁹⁵ Voir *délibérations*, 13:41.

²⁹⁶ Voir *délibérations*, 8:50.

²⁹⁷ Voir *délibérations*, 13:39.

²⁹⁸ Voir *délibérations*, 13:46.

²⁹⁹ Voir *délibérations*, 9:90.

³⁰⁰ Voir chapitre III.

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suscité des discussions au Ministère. Dans le procès-verbal d'une réunion organisée le 18 mars dans le but de présenter M. Broadbent à l'équipe de négociation, il est question de l'existence possible d'engagements à long terme³⁰¹.

Selon M. Broadbent, il a été informé, plusieurs semaines après sa nomination comme négociateur en chef, par le représentant du ministère de la Justice agissant comme conseiller juridique auprès de l'équipe de négociation, de l'existence du document de 1989, dit des «principes directeurs». Ce document prévoyait notamment, comme nous l'avons vu, le renouvellement du bail d'Air Canada (qui aurait normalement pris fin en 1997) pour une période de vingt ans et deux périodes de prolongation de dix ans. M. Broadbent a aussi appris que cet accord n'était pas mentionné dans la demande de propositions et ne figurait pas parmi les documents mis à la disposition des proposant, auxquels le gouvernement était légalement tenu de communiquer l'accord. Cet élément nouveau a suscité beaucoup d'inquiétude, selon M. Broadbent, et entraîné d'importants retards. En plus de créer une situation nouvelle qui avait des répercussions sur un certain nombre de points, dont la question de la capacité de financement, cela risquait peut-être aussi, en permettant au proposant de prétendre que la demande de propositions avait été modifiée rétroactivement, de rendre inutile tout ce qui avait été accompli jusque-là³⁰².

Comme on l'a mentionné dans un chapitre précédent, il semble y avoir eu de l'incertitude au sein du Ministère quant à la valeur réelle qu'Air Canada accordait au document sur les principes directeurs; la plupart des fonctionnaires croyaient que cet accord n'était plus exécutoire. Le Ministère a immédiatement décidé de préparer, à l'intention d'Air Canada, un certificat de préclusion l'obligeant à respecter le bail existant ou à confirmer clairement la validité dit des «principes directeurs».

La préparation du certificat de préclusion a toutefois compliqué la situation. À l'examen du bail, les fonctionnaires ont constaté que les paiements requis en vertu des modifications apportées au bail n'avaient pas été perçus et que la compagnie aérienne devait environ 8 millions de dollars à l'État. M. Broadbent a signalé la chose aux responsables des finances et de la vérification au Ministère. Il a fait part au Comité de son étonnement que cet oubli ne semblait pas les inquiéter outre mesure³⁰³.

Il semble qu'Air Canada, interrogée à ce sujet par M^{me} Labelle, ait continué de soutenir la validité des «principes directeurs». Transports Canada a alors dû informer les promoteurs de l'existence de ce document, qui risquait d'avoir des répercussions importantes

³⁰¹ Document du comité, LA 00007.

³⁰² Voir *délibérations*, 9:97-98.

³⁰³ Voir *délibérations*, 9:99.

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sur les conditions à négocier avec Air Canada. À la mi-juin 1993, M^{me} Labelle a envoyé à Paxport et à Claridge une lettre au sujet d'une question qu'elle croyait réglée, disait-elle, mais qui ne l'était peut-être pas³⁰⁴. Une fois signalés les aspects des négociations susceptibles d'être touchés, la lettre affirmait la position du Ministère comme quoi le versement à Air Canada de 36 millions de dollars au titre du rajustement du capital, prévu dans la proposition de Paxport, remplacerait tous les droits créés par les «principes directeurs»; elle confirmait aussi qu'il incombait à Mergeco d'en arriver à une entente complète avec Air Canada.

Comme il fallait s'y attendre, les promoteurs ont mal accueilli la nouvelle, comme M. Coughlin, qui représentait Claridge, l'a expliqué :

Nous en sommes restés bouche bée. Tout notre plan d'entreprise reposait sur notre capacité de négocier un nouveau bail avec Air Canada en 1997. C'est pourquoi nous avons accepté un report partiel de trois ans des redevances et convenu d'entreprendre un programme d'expansion de 350 millions assorti d'aucune condition³⁰⁵.

M. Hession a utilisé des termes semblables pour décrire la situation de Paxport, qu'il qualifiait de traumatisante, car cela avait contraint Paxport, au cours des mois précédents, de négocier une entente avec Air Canada sans être au courant d'un arrangement qui permettait à celle-ci de nourrir de grandes attentes et lui donnait droit de veto sur les négociations³⁰⁶.

Cette situation nouvelle devait donner lieu à ce que l'on a appelé, au Ministère, le «sandwich Air Canada». À partir de la mi-juin, les promoteurs se sont trouvés coincés par le différend opposant Air Canada et le Ministère à propos du document sur les principes directeurs. Selon la tournure des événements, Air Canada aurait pu soit influencer fortement les premières étapes de l'accord en refusant de modifier les modalités d'un bail qui n'expirait pas avant 1997, soit décider du sort de l'entente si les droits conférés par le bail étaient prolongés d'une quarantaine d'années.

L'impasse dans laquelle se trouvaient les discussions entre Mergeco et Air Canada, conjuguée à ces nouvelles difficultés, a poussé M^{me} Labelle à décider à la mi-juin, de concert avec l'équipe de négociation, que le Ministère devait adopter une approche plus interventionniste. Les deux parties ont donc été invitées à tenter, avec le négociateur en chef, de régler leur différend.

³⁰⁴ Huguette Labelle à Jack Matthews, le 9 juin 1992, Document du comité, LA 001553.

³⁰⁵ Voir *délibérations*, 17:14.

³⁰⁶ Voir *délibérations*, 8:78 et 9:29.

D) La conclusion de l'entente

Lorsqu'il a accepté le rôle de négociateur en chef le 15 juin 1993, M. Rowat a constaté que les principaux éléments de l'accord éventuel étaient réglés, ou presque³⁰⁷. Parmi les questions passablement avancées, sinon entièrement réglées, il y avait la définition des responsabilités respectives du gouvernement et des promoteurs en matière d'environnement, les dispositions relatives au transfert des employés, la participation des locataires et les redevances d'installation passagers³⁰⁸.

Il restait du travail à faire sur plusieurs autres questions, dont l'avenir de l'aérogare 1 : combien de temps resterait-elle ouverte et comment les coûts de son exploitation seraient-ils partagés³⁰⁹? De même, on avait rejeté la demande initiale de Paxport qui voulait des garanties que le gouvernement ne ferait rien dans d'autres aéroports qui puisse faire baisser le trafic à Pearson sous le seuil de 39 millions de passagers par an. On continuait cependant de négocier une protection assortie d'un seuil réduit et de nouvelles conditions.

Les négociateurs de part et d'autre s'étaient entendus pour que les promoteurs, au cours des trois premières années de l'accord, reportent le paiement à l'État d'un loyer annuel de 11 millions de dollars et injectent en échange 96 millions de dollars dans la phase de démarrage, sans qu'il y ait augmentation des frais pour les compagnies aériennes au cours des deux premières années. Il restait toutefois à s'entendre sur certaines modalités de cet arrangement. Et à la mi-juin, selon Rowat, le point le plus difficile qui restait à régler était la conclusion d'ententes avec Air Canada³¹⁰.

Au moment où M. Rowat assumait le rôle de négociateur en chef, le choix d'un nouveau dirigeant du Parti progressiste conservateur, qui était alors au pouvoir, soulevait la possibilité de nomination de nouveaux ministres et sous-ministres, ainsi que de changements au chapitre des priorités et des politiques gouvernementales. Cela a amené le promoteur à réclamer une déclaration officielle ou un protocole d'entente qui confirmerait, autant que possible, les résultats obtenus jusque-là dans les négociations et engagerait le gouvernement à mener le processus à terme. Alors que les représentants du Ministère ont su résister à un engagement exécutoire, les deux parties ont signé le 18 juin 1993 une lettre dans laquelle ils reconnaissaient l'état des négociations et rappelaient leur engagement réciproque à régler les questions en suspens et à conclure les divers accords relatifs au projet avant le 15 juillet, si

³⁰⁷ Voir *délibérations*, 10:57.

³⁰⁸ Voir *délibérations*, 10:77.

³⁰⁹ Voir *délibérations*, 12:40.

³¹⁰ Voir *délibérations*, 10:57.

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possible. Il était bien précisé dans la lettre qu'il ne s'agissait pas d'une entente légalement exécutoire³¹¹.

À la même période, le processus de négociations parallèles établi par M. Broadbent a été remplacé par un seul processus de négociations, autour d'une même table³¹². Ce changement tenait compte du stade relativement avancé des négociations, avec toute la dynamique que cela impliquait. Les points qui pouvaient être réglés séparément étaient alors en grande partie résolus. Une entente globale exigerait de plus en plus des compromis sur les diverses questions encore en suspens.

Afin de bien baliser la stratégie pour dégager ces compromis, et faire en sorte que les représentants du Bureau du Conseil privé et du Secrétariat du Conseil du Trésor soient d'accord avec l'entente en préparation, M. Rowat a demandé qu'on prépare une stratégie de négociation détaillée, qui est devenue le «livre noir». Les premières versions de ce document ont été distribuées au ministre des Transports et aux représentants d'autres ministères et d'organismes centraux, et la version définitive a été établie à l'issue d'une série de réunions tenues au cours de la dernière moitié de juin³¹³.

Le livre noir renfermait un énoncé des objectifs généraux des négociations, fondés sur la demande de propositions. Au cours de son témoignage, M. Rowat a résumé ces objectifs en trois principes : 1) que le gouvernement ne s'en sorte pas plus mal financièrement qu'avec n'importe quelle autre option, par exemple en continuant d'exploiter lui-même les aérobares; 2) que l'aéroport reste compétitif, à l'échelle nationale et internationale, notamment sur le plan de ses coûts par passager; 3) que la solution retenue n'impose pas de fardeau trop onéreux aux compagnies aériennes ou aux passagers par suite du réaménagement des aérobares³¹⁴.

Le livre de négociation renfermait également des rapports d'avancement et présentait les positions de négociation adoptées pour les questions restantes, dont le dilemme d'Air Canada. Le gouvernement semble avoir adopté comme position que même si les principes directeurs n'étaient pas mentionnés dans les documents disponibles dans la salle de données, la demande de propositions avait adéquatement réglé ce problème en obligeant les proposants à respecter le bail d'Air Canada qui était en vigueur et à négocier avec elle les modalités du réaménagement (00302, annexe K, p.5). Les négociations du gouvernement redoubleraient d'efforts pour amener Air Canada à négocier une entente avec Mergeco, en

³¹¹ Voir *délibérations*, 10:64-65.

³¹² Voir *délibérations*, 10:67 et 10:69.

³¹³ Voir *délibérations*, 10:67 et 10:69.

³¹⁴ Voir *délibérations*, 10:88.

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se servant, comme moyen de pression, du fait qu'en l'absence d'entente le gouvernement conclurait lui-même avec Mergeco des ententes qui entraîneraient des augmentations de coûts pour Air Canada à l'expiration de son bail. Cette approche reflétait l'avis de M. Rowat pour qui la valeur du document dit des «principes directeurs» n'était pas aussi évidente que pouvaient le penser certains, dont son prédécesseur. Air Canada avait reçu les premières versions de la partie pertinente de la demande de propositions avant sa publication et n'avait trouvé rien à redire quant à l'absence de mention du document de 1989³¹⁵.

D'après M. Rowat, la société Air Canada s'était fixé trois objectifs fondamentaux. Elle voulait être indemnisée pour le solde non amorti des quelque 65 millions de dollars investis dans l'aérogare 2 au cours des dernières années. Elle voulait également éviter des augmentations de coûts avant 1997; sa situation financière était précaire et elle jugeait trop optimistes les prévisions de trafic rassurantes préparées par Transports Canada. Tout en reconnaissant la nécessité du réaménagement, Air Canada voulait aussi s'assurer que les augmentations de coûts après 1997 lui permettrait de garder le coût par passager aux aérogares 1 et 2 concurrentiel avec celui des autres lignes aériennes à d'autres aérogares³¹⁶.

Le 28 juin 1993, fidèle à l'approche plus interventionniste adoptée par le Ministère à la mi-juin dans les négociations entre Air Canada et Mergeco, M. Rowat a assisté à une réunion entre les deux parties pour observer de près les efforts qu'elles faisaient pour s'entendre. Il a aussi rencontré séparément chacune des parties. Il a ainsi pu constater qu'il avait bien cerné les préoccupations d'Air Canada et que celle-ci utilisait surtout le document de 1989, les «principes directeurs», comme levier dans les négociations³¹⁷. M. Rowat dit avoir ensuite informé le ministre Corbeil de la situation et lui avoir demandé conseil³¹⁸.

Au cours des deux semaines suivantes, sur le conseil du ministre Corbeil, M. Rowat a tenté de faire avancer les choses avec Air Canada et Mergeco³¹⁹. Il a ensuite fait son rapport au ministre Corbeil. Les commentaires de celui-ci semblent indiquer que l'approche générale présentée dans les livres de négociation («...ce n'est pas notre responsabilité, mais la vôtre») continuait d'être suivie, malgré la participation de M. Rowat comme facilitateur. Lors de sa comparution devant le Comité, le ministre a insisté sur le résultat, disant qu'il répondait pleinement aux objectifs du gouvernement³²⁰.

³¹⁵ Voir *délibérations*, 11:28.

³¹⁶ Voir *délibérations*, 11:29.

³¹⁷ Voir *délibérations*, 10:74.

³¹⁸ Voir *délibérations*, 10:74 et 11:29.

³¹⁹ Voir *délibérations*, 12:4-5.

³²⁰ Voir *délibérations*, 21:33.

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Selon des précisions fournies par M. Rowat, l'entente négociée entre Mergeco et Air Canada à la mi-juillet rendait possible un accord de réaménagement qui garantissait au gouvernement un rendement supérieur à celui de la meilleure solution de rechange envisageable, c'est-à-dire le scénario de référence — la construction par l'État — qui avait fait l'objet d'une analyse au Ministère³²¹. Les résultats de l'analyse furent transmis à M. Nixon dans une note datée du 4 novembre 1993 qui postulait, comme position limite, la conclusion suivante :

Pour que l'option de la construction par l'État produise des recettes équivalentes à la location au secteur privé, il faudrait supposer un taux de croissance réel de 10 p. 100 par année. Sous la gestion de l'État dans le passé, la croissance des recettes n'a pas dépassé le taux d'inflation.

Comme un taux de croissance correspondant au taux d'inflation ne représente aucune croissance réelle, l'analyse du scénario de référence favorise manifestement l'option de la location au secteur privé du point de vue des recettes éventuelles pour l'État.

L'analyse du scénario de référence comportait en outre une comparaison des estimations de la valeur nette actuelle des aéroports pour l'État, dans le cadre de l'option de la construction par l'État et de celle du bail accordé au secteur privé. Or, la comparaison va manifestement dans le sens du jugement porté par M. Rowat. Les hypothèses au sujet des recettes qui produiraient une valeur de 227 millions de dollars en cas de construction par l'État correspondent à un contrat de location au secteur privé d'une valeur de 555 millions, tandis que des hypothèses produisant des recettes de 595 millions en cas de construction par l'État portent pour celui-ci la valeur d'un contrat de location au secteur privé à 843 millions.

Selon M. Rowat, l'accord prévoyait également un taux de rendement global moindre que celui que souhaitait, à l'origine, la Pearson Development Corporation (le nouveau nom de la coentreprise Mergeco). La Pearson Development Corporation (PDC) réduisait le taux de capitalisation pour les compagnies aériennes et acceptait de verser aux compagnies utilisant les aéroports 1 et 2 10 p. 100 de ses revenus nets provenant des concessionnaires. **M. Rowat y voyait des concessions importantes qui montraient bien que «... tout le monde a accepté de mettre un peu d'eau dans son vin pour parvenir à une entente»³²².**

Pour sa part, le gouvernement avait accepté de modifier son loyer foncier, de reporter, entre autres, 11 millions de dollars en paiements de loyer par an pour les trois premières

³²¹ Voir *délibérations*, 10:77 et 12:8.

³²² Voir *délibérations*, 10:77.

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années, ce qui a aidé les promoteurs à faire une offre intéressante à Air Canada³²³. Il restait un dernier point à régler : la période sur laquelle les promoteurs rembourseraient le loyer différé. Les promoteurs avaient demandé, au départ, que le remboursement soit étalé sur le reste de la durée de l'accord, soit sur plus de 50 ans; cette option a cependant été rejetée lors d'une réunion des sous-ministres, à la mi-mai, de crainte que cela n'ait l'air d'une subvention permanente du gouvernement. Les négociateurs du gouvernement ont donc insisté sur une période de remboursement de dix ans, les intérêts étant calculés au taux préférentiel plus 2,5 p. 100³²⁴.

Dès juillet 1993, les négociations étaient alors apparemment arrivées au point où l'on pouvait envisager leur aboutissement et une date pour la conclusion de l'entente. M. John Desmarais, de l'équipe de négociation, et M. Peter Coughlin ont convenu du 7 octobre 1993 comme point de repère pour les activités subséquentes³²⁵. M. Coughlin a déclaré qu'on a procédé ainsi pour éviter que les avocats ne prolongent les négociations indéfiniment³²⁶.

La firme Deloitte & Touche pouvait maintenant présenter officiellement son évaluation des aspects financiers de l'entente. Ce rapport a été présenté sous la forme d'une lettre envoyée à M. Rowat le 17 août 1993 par M. Paul Stehelin, président de Deloitte & Touche. Les conclusions reflétaient le mandat élargi que la firme avait obtenu depuis la parution, en mars, de son rapport sur la capacité de financement de la proposition de Paxport.

Ce rapport faisait une évaluation positive de la capacité de financement de la proposition de PDC, d'après les prévisions financières préparées par cette dernière à la fin de juillet et en tenant compte des arrangements intervenus au cours des négociations. Tout en approuvant du rôle de Claridge et de l'aérogare 3, le rapport faisait une mise en garde : étant donné la longue durée du projet, les prêteurs voudront examiner le rendement des promoteurs au cours des étapes initiales, particulièrement au cours des quatre premières années, avant de consentir à financer les étapes ultérieures³²⁷.

Plusieurs autres questions ont également été abordées. Constatant que la situation avait considérablement changé depuis l'estimation du potentiel commercial effectuée en

³²³ Voir *délibérations*, 11:30.

³²⁴ Voir *délibérations*, 12:7.

³²⁵ Voir *délibérations*, 12:42.

³²⁶ Voir *délibérations*, 17:78.

³²⁷ Rapport de Deloitte & Touche par Paul Stehelin, Document du comité, LA 002492, p. 1-3.

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juillet 1992 par Price Waterhouse, Deloitte & Touche a présenté une nouvelle estimation de la valeur nette du bail foncier, qui se situait entre 800 millions et 900 millions de dollars³²⁸.

On a estimé que le taux de rendement pour le promoteur s'élèverait à 14 p. 100, soit au milieu de la fourchette de 12 à 16 p. 100 des taux de rendement après impôt que l'on considèrerait comme raisonnables étant donné la nature du projet. Il était difficile cependant, a-t-on noté, de trouver une base de comparaison appropriée pour un projet de ce genre³²⁹.

Il a également été dit que pour porter un jugement sur le taux de rendement, il fallait prendre en compte certaines considérations non quantitatives : le rendement pour le promoteur, quasiment nul au cours des dix premières années, ne deviendrait intéressant qu'après vingt ans et ne serait pas à l'abri des hausses d'impôt; les investissements ultérieurs requis des promoteurs pour maintenir les aéroports au niveau international ne figuraient pas dans les prévisions financières des proposants; des risques particuliers associés aux revenus autres que ceux provenant des compagnies aériennes, ainsi qu'à l'éventualité d'une reprise économique plus lente que prévu pourraient retarder les travaux et faire augmenter les coûts. En outre, contrairement à un service public, la Pearson Development Corporation n'aurait pas pu répercuter toutes ses augmentations de coûts sur le consommateur³³⁰.

E) Les organismes centraux

L'accord étant terminé en grande partie et une évaluation financière indépendante étant en cours, le document pouvait être envoyé au Conseil du Trésor pour un dernier examen par les ministres. Le rôle déterminant du Conseil du Trésor au cours de cette dernière étape constitue l'aboutissement d'une tendance vers une participation accrue des organismes centraux, qui s'était manifestée avant même le début des négociations proprement dites. Cette évolution reflète la réalité en somme : ce sont les ministres et leur collaborateurs qui élaborent des initiatives (habituellement avec l'approbation du Cabinet), mais c'est le gouvernement, ou les ministres collectivement, qui en est responsable et qui doit finalement décider s'il faut y donner suite ou non. Au cours des discussions et des négociations, les représentants des organismes centraux ont eu essentiellement pour rôle de veiller à ce que l'on réponde aux points soulevés par les ministres de l'extérieur du Ministère, pour que la ratification par le Conseil du Trésor et le Cabinet puisse se faire sans problème.

À la lecture de diverses notes que se sont échangées le Premier ministre et M. Shortliffe, alors greffier du Conseil privé, nous avons pu constater l'importance que le

³²⁸ *Ibid.*, p. 6.

³²⁹ *Ibid.*, p. 6-8.

³³⁰ *Ibid.*, p. 7.

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gouvernement accordait au projet de réaménagement de l'aéroport Pearson, notamment à partir de novembre 1992. Selon M. Shortliffe, le gouvernement considérait le projet Pearson comme une priorité et souhaitait le mener à bien avant de quitter le pouvoir, et le Premier ministre pour sa part portait un vif intérêt au dossier³³¹. Pour permettre au greffier du Conseil privé de tenir le Premier ministre au courant des faits nouveaux, il fallait que les représentants du Bureau du Conseil privé suivent le processus de près. Des réunions auxquelles assistaient des représentants du Conseil du Trésor et du Bureau du Conseil privé ont eu lieu chaque semaine pendant une grande partie de cette période³³². Très souvent, elles étaient, en fait, organisées par le Bureau du Conseil privé, à la demande de la sous-ministre des Transports ou en son nom³³³.

Comme on l'a vu, en plus de suivre l'évolution de la situation, le greffier du Conseil privé servait de temps à autre de conseiller principal ou de facilitateur. Sur le plan des changements de personnel, par exemple, il semble que l'avis du greffier a joué un rôle important dans les décisions prises par la sous-ministre des Transports, M^{me} Labelle, et le prêt, par le Bureau du Conseil privé, des services de M. Rowat pour remplacer M. Broadbent, a réglé ce qui aurait pu être une question épineuse vers la fin des négociations. M. Shortliffe en a donné un autre exemple, lié celui-là à la création de la coentreprise initialement appelée Mergeco. Il semble que lui et d'autres représentants du Conseil privé avaient compris que la viabilité du projet de réaménagement dépendait de la réalisation de la fusion de Paxport et Claridge au printemps 1993, et ils ont ensemble cherché à favoriser cette issue³³⁴.

Lors de ces réunions et à d'autres réunions semblables, les fonctionnaires du Conseil du Trésor se faisaient en quelque sorte les avocats du diable, conformément au rôle d'examineur critique joué par les ministres du Conseil du Trésor. M. Mel Cappe, aujourd'hui sous-ministre à Environnement Canada, mais alors sous-secrétaire de la Direction des programmes au Secrétariat du Conseil du Trésor (SCT), nous a décrit succinctement le rôle du Secrétariat :

Il soulève des questions et des problèmes pour les ministres et les hauts fonctionnaires pour faire en sorte qu'il en soit tenu compte dans les prises de décision. Il veille à ce que toutes les bonnes questions soient posées et à ce que les ministres disposent des renseignements leur permettant de prendre une décision relativement à un dossier. Dans la plupart des ministères

³³¹ Voir *délibérations*, 24:68 et 24:107.

³³² Voir *délibérations*, 24:80.

³³³ Voir *délibérations*, 10:58.

³³⁴ Voir *délibérations*, 24:78.

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gouvernementaux, le Secrétariat du Conseil du Trésor est considéré comme un mal nécessaire³³⁵.

Commentant la façon dont les représentants du Conseil du Trésor s'étaient comportés à l'égard du projet de réaménagement des aérogares 1 et 2, M. Cappe s'est dit convaincu qu'ils avaient bien fait leur travail³³⁶. L'examen d'une série de notes faisant état des questions posées par les représentants du Conseil du Trésor et une discussion à ce sujet avec des représentants du Secrétariat du Conseil du Trésor et du Ministère nous amènent à nous ranger à son avis. L'accord concernant l'aéroport Pearson, à mesure que les divers éléments tombaient en place, a fait l'objet d'un examen très serré de la part des représentants du Conseil du Trésor.

La complexité du dossier, la perspective d'une controverse publique et l'impression que le gouvernement tentait de régler toutes les questions liées à l'aéroport Pearson (aérogares, pistes etc.) sans avoir une vision d'ensemble ont amené, en mars 1993, certains fonctionnaires du Conseil du Trésor à qualifier le dossier de «beau bourbier». Selon M. Cappe, ils estimaient qu'il vaudrait mieux en somme confier le tout à une administration aéroportuaire locale³³⁷. Certains fonctionnaires du Conseil du Trésor avaient l'impression par ailleurs que le processus était dans une impasse, les questions de la capacité de financement et d'Air Canada n'étant pas réglées. Devant la possibilité d'un autre retard et les progrès sensibles en vue de la création d'une administration aéroportuaire locale viable à Toronto, cette option semblait redevenir réalisable à leurs yeux, même si l'administration n'avait pas encore vu le jour³³⁸.

Étant donné le caractère confidentiel des documents du Cabinet, nous n'avons pas eu accès aux détails qui nous auraient permis de savoir comment les ministres ont été informés de ces critiques du projet, ou de connaître leur influence sur les délibérations. Cependant, on peut raisonnablement supposer que les ministres du Conseil du Trésor qui examinaient l'accord conclu à la mi-août auraient été avisés des préoccupations du Conseil du Trésor qui persistaient. Par exemple, l'enlisement du processus ou les questions non réglées comme la capacité de financement et l'aval d'Air Canada, n'étaient plus un souci immédiat à la mi-août. Par contre, comme on le verra un peu plus loin, d'autres préoccupations comme la crainte d'une controverse politique ou l'avancement du dossier de l'administration aéroportuaire locale, prenaient alors plus d'ampleur. Au moins jusqu'à la fin de juillet 1993, les responsables du Conseil du Trésor ont privilégié des négociations accélérées avec une

³³⁵ Voir *délibérations*, 14:10.

³³⁶ Voir *délibérations*, 14:11.

³³⁷ Voir *délibérations*, 14:33.

³³⁸ Voir *délibérations*, 14:34-45.

administration aéroportuaire locale, même si l'on reconnaissait qu'une telle démarche pourrait ne pas être possible à moins que les négociations avec la Pearson Development Corporation ne s'effondrent³³⁹.

Vers la mi-août, les ministres du Conseil du Trésor ont reçu la présentation officielle du ministère des Transports, qui exposait en détail l'accord conclu avec la Pearson Development Corporation ainsi que l'analyse faite par les représentants du Secrétariat³⁴⁰. Plus tard en août, une fois approuvé par le Conseil du Trésor, l'accord a été transmis au Cabinet. Le 27 août 1993, celui-ci a publié les décrets qui autorisaient le ministre des Transports à conclure, avec la Pearson Development Corporation, des accords de location-bail et de réaménagement³⁴¹.

À ce stade, il restait à annoncer publiquement l'accord, à faire établir le bail définitif et d'autres documents contractuels par le ministère de la Justice (qui devait également s'assurer qu'aucun changement important n'était survenu entre-temps), à faire signer ces documents par les parties concernées et à conclure l'entente.

F) Les lobbyistes

Après l'annonce de la meilleure proposition globale retenue, les deux promoteurs ont continué de retenir les services de lobbyistes. À partir du moment où Claridge a retiré sa proposition, soit le 5 mai 1993, les lobbyistes qui travaillaient pour les consortiums concurrents ont uni leurs efforts en faveur de la Pearson Development Corporation.

i) Paxport

Comme on l'a vu, la sélection de la proposition de Paxport en décembre 1992 a mené directement à l'ouverture de discussions suivies entre les représentants de Paxport et le gouvernement. Les lobbyistes qui travaillaient pour Paxport perdaient ainsi leur rôle de liaison entre leur client et les fonctionnaires directement engagés dans le processus.

M. Neville, qui coordonnait le lobbying au profit de Paxport, ne nous a pas donné de détails sur les activités des lobbyistes au cours des négociations. Quand il prétend qu'il aurait été inconvenant de tenter d'influencer les décideurs dans le cours du processus d'évaluation

³³⁹ Voir *délibérations*, 14:77.

³⁴⁰ Voir *délibérations*, 14:73.

³⁴¹ Voir *délibérations*, 14:62.

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officielle, on peut supposer que le lobbying aurait consisté, durant les négociations, à réunir de nouveaux appuis pour le projet de réaménagement et à conseiller le client³⁴².

M. Pascoe, de la firme A.D. Pascoe and Associates, nous a dit qu'il avait continué de représenter Paxport pendant cette période aux termes d'un mandat qui prévoyait des contacts avec des groupes de l'extérieur de l'administration fédérale. Il a toutefois confirmé qu'il avait aussi accompagné M. Hession à une réunion avec des fonctionnaires fédéraux pour discuter du projet de réaménagement des aéroports 1 et 2 en janvier 1993, comme l'indiquait un document en notre possession³⁴³.

(ii) Claridge

Comme aux autres étapes du processus, nos principales sources d'information sur les activités de lobbying de Claridge à la suite de l'annonce de la meilleure proposition globale ont été MM. Harry Near et Bill Fox, qui dirigeaient l'intervention du Earnscliffe Strategy Group en faveur de la proposition de Claridge.

Selon M. Near, la principale activité de lobbying, pendant les discussions entre le gouvernement et Paxport, consistait à s'assurer que cette dernière satisfaisait aux conditions préalables établies par le gouvernement³⁴⁴. Cela s'explique par le fait que Claridge n'avait pas encore retiré sa proposition, et qu'il demeurait un substitut possible si les pourparlers avec Paxport devaient échouer. M. Fox a, pour sa part, parlé de rédaction de documents sur les relations avec les médias et de surveillance des médias³⁴⁵.

D'après M. Near, les lobbyistes n'avaient pas grand-chose à faire pendant que se constituait la coentreprise. On attendait, se demandant si cela allait aboutir. Quand on s'est aperçu que cela allait probablement réussir, Earnscliffe a participé à la préparation d'un exposé sur les avantages de la coentreprise à l'intention de représentants officiels, de conseils de rédaction et d'autres intéressés³⁴⁶. Dans l'ensemble, la période des négociations a été un temps mort pour les lobbyistes; les parties se réunissaient à huis clos, tous les intéressés se trouvant dans la pièce³⁴⁷.

³⁴² Voir *délibérations*, 16:18.

³⁴³ Voir *délibérations*, 16:50.

³⁴⁴ Voir *délibérations*, 15:82.

³⁴⁵ Voir *délibérations*, 15:82.

³⁴⁶ Voir *délibérations*, 15:82-83.

³⁴⁷ Voir *délibérations*, 15:113.

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En août 1993, l'activité de lobbying s'est intensifiée au moment des préparatifs en vue de l'annonce de l'entente. Selon M. Fox, les activités de communication étaient alors «particulièrement intenses»³⁴⁸. Un communiqué de presse a été rédigé et, à partir de la fin août, un sondage d'opinion quantitatif entrepris dans la région de Toronto visait à établir une stratégie de publicité pour répondre aux préoccupations soulevées par l'accord³⁴⁹.

M. Herb Metcalfe, du Capital Hill Group, qui a travaillé avec Earnscliffe pour Claridge, nous a brossé, des activités de lobbying durant l'étape des négociations, un tableau qui rejoint en gros ceux de MM. Fox et Near³⁵⁰.

G) L'annonce de l'entente

Le 30 août 1993, le ministre Corbeil, après avoir obtenu l'autorisation du Cabinet de mettre la dernière main aux documents juridiques et de les signer, a annoncé officiellement qu'une entente avait été conclue. L'annonce a eu lieu à Toronto en présence des ministres Lewis, Wilson et Martin, des maires, des représentants officiels et des promoteurs³⁵¹.

Les documents d'information rendus publics lors de l'annonce résumaient les grandes lignes des six ententes principales : le bail foncier, l'option de location, le plan d'aménagement, l'entente de gestion et d'exploitation, l'entente sur le transfert des employés et celle sur l'administration et les services.

Les trois premières ententes comprenaient la plupart des dispositions d'intérêt public, ainsi que la description des clauses du bail foncier. Celui-ci aurait une durée initiale de 37 ans et pourrait être renouvelé pour une autre période de 20 ans. Le gouvernement conservait le droit de racheter l'option de prolongation au taux du marché, trois ans avant l'échéance du bail initial.

La formule régissant les loyers garantissait au gouvernement un paiement minimal de 28 millions de dollars pour la première année, montant qui pouvait augmenter en fonction de l'inflation, du trafic-voyageurs et de l'augmentation des revenus bruts. On soulignait la différence entre cette somme et les 23,6 millions de dollars que recevait alors le gouvernement, en revenus nets, des aéroports 1 et 2. On mentionnait également qu'en établissant le montant du loyer, on avait voulu assurer

³⁴⁸ Voir *délibérations*, 15:113.

³⁴⁹ Voir *délibérations*, 15:113-114.

³⁵⁰ Voir *délibérations*, 15:125.

³⁵¹ Voir *délibérations*, 21:32.

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un revenu raisonnable au gouvernement tout en évitant d'imposer des coûts excessifs aux compagnies aériennes ou des frais qui réduiraient la compétitivité de l'aéroport Pearson par rapport aux autres grands aéroports. On soulignait le principal avantage qualitatif pour le gouvernement : le réaménagement se ferait sans que l'État ait à fournir de fonds ni de garanties.

On y évoquait également les dispositions concernant le report des loyers, en vertu desquelles le gouvernement acceptait de reporter la perception de 33 millions de dollars en loyers payables au cours des premières années afin que les travaux puissent commencer sur-le-champ, sans augmentations de coûts pour les compagnies aériennes à court terme. Le remboursement de ces loyers, se ferait, avec intérêts, à partir de la cinquième année du bail.

Il était également fait mention de l'entente touchant le déroutement du trafic-voyageurs qui mettait le promoteur des aérogares à l'abri de réductions marquées du trafic-voyageurs et des recettes dues à l'agrandissement par le gouvernement d'aéroports avoisinants. Le gouvernement s'engageait en effet à ne rien entreprendre dans les aéroports situés dans un rayon de 75 kilomètres de l'aéroport Pearson, qui aurait pour effet d'abaisser le nombre de passagers sous la barre des 33 millions par année. Avec la réserve que le déroutement ne devait toucher que des groupes de passagers et ne pas avoir d'effet cumulatif, l'entente autorisait un déroutement maximal de 1,5 million de passagers sous ce seuil avant que ne s'appliquent les dispositions concernant le dédommagement des promoteurs.

Les rôles respectifs en matière de protection de l'environnement étaient également mentionnés. Le gouvernement continuerait d'assumer la responsabilité de toute contamination du sol et de la nappe phréatique survenue avant la signature du bail; le promoteur assumerait par la suite ces responsabilités.

Un aperçu du plan d'aménagement accompagnait également l'annonce. En voici les principaux éléments : la valeur totale du projet (750 millions de dollars), le fait que les travaux se dérouleraient en quatre étapes, le début des deux dernières étant fonction de l'atteinte du seuil du trafic-voyageurs, et le remplacement de l'aérogare 1 par une annexe prolongeant une aérogare agrandie.

Dans l'annonce, on se disait optimiste quant au fait que les revenus provenant des compagnies aériennes et des exploitants de concessions allaient couvrir les coûts du réaménagement, mais on mentionnait également que l'entente prévoyait l'imposition de redevances d'installation passagers. Il s'agit de droits exigés de chaque passager utilisant les installations. Ces droits servent à financer les travaux d'aménagement assumés, par exemple, par l'administration aéroportuaire locale de Vancouver. Dans les accords concernant l'aéroport Pearson, ces frais ne s'appliqueraient, sous réserve de l'approbation du gouvernement, que dans les cas où les promoteurs devraient, pour financer des travaux

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d'aménagement nécessaires, augmenter les loyers et que les compagnies aériennes seraient incapables d'absorber une telle augmentation. Selon M. John Desmarais, du Ministère, il aurait fallu, aux termes des accords Pearson, que les sociétés aériennes soient en faillite pour que la Pearson Development Corporation puisse percevoir des redevances d'installation passagers³⁵².

L'annonce faisait également état des ententes concernant la gestion et l'exploitation des aérogares et le transfert des employés, notamment la politique de prix basée sur les coûts pour les compagnies aériennes, le transfert des 160 employés de Transports Canada aux aérogares 1 et 2, avec protection des salaires et des avantages sociaux et garantie d'emploi de deux ans.

Le jour de l'annonce, le ministre Jean Corbeil et ses collègues ont souligné de façon toute particulière les avantages économiques de l'entente. Dans le communiqué de presse diffusé le 30 août 1993, le ministre a affirmé que le projet ferait de l'aéroport Pearson une porte d'entrée de classe mondiale, attrayante et efficace, tant pour le Canada que pour l'Amérique du Nord. Le ministre Doug Lewis a, pour sa part, parlé du nouveau souffle que cet investissement de 1,1 milliard de dollars, pour la construction des pistes et le réaménagement des aérogares, donnerait à l'industrie de la construction et à l'activité économique dans la région de Toronto.

Après cette annonce, c'était aux fonctionnaires du ministère de la Justice qui s'occupaient de la rédaction des textes juridiques découlant des ententes, de prendre le relais. Il restait également à finaliser certaines ententes.

H) L'administration aéroportuaire locale

Parallèlement à la négociation des ententes, se poursuivaient des discussions et démarches relativement à la création d'une administration aéroportuaire à Toronto et à sa reconnaissance par le gouvernement fédéral.

Dans une lettre en date du 9 mars 1993, le ministre Corbeil était informé de la création de la Greater Toronto Regional Airport Authority (GTRAA), que l'on prévoyait constituer en organisme sans but lucratif. La lettre était accompagnée d'un résumé des résolutions adoptées par les conseils municipaux et régionaux qui formaient l'administration. Le ministre avait, en effet, exigé précédemment une preuve de l'assentiment des municipalités concernées. La lettre contenait également la liste des dix administrateurs de la GTRAA. Celle-ci demandait donc au gouvernement fédéral de la reconnaître comme

³⁵² Voir *délibérations*, 12:63.

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administration aéroportuaire locale et de rencontrer ses représentants pour régler les questions en suspens, le cas échéant³⁵³.

Selon Robert Bandeen, qui est devenu président de la GTRAA au printemps de 1993, les membres du conseil d'administration se considéraient fins prêts. Le conseil était en place, ils avaient le financement voulu et des conseillers techniques pour les appuyer³⁵⁴. Au début de mai, M. Bandeen a écrit au ministre des Transports pour solliciter une entrevue de toute urgence et demander que le gouvernement fédéral reconnaisse officiellement la GTRAA afin que les négociations sur la cession de l'aéroport Pearson puissent commencer.

Le 6 mai 1993, dans sa réponse à la lettre de la GTRAA, le ministre Corbeil a demandé que les cinq régions et les principales municipalités signifient leur accord inconditionnel en adoptant des résolutions en ce sens. Il réitérait ainsi la position qu'il avait adoptée avec les représentants de la GTRAA, à une réunion par M. Michael Farquhar, alors directeur du Groupe de travail sur la cession des aéroports de Transports Canada³⁵⁵. À cette réunion, le Ministre s'était dit préoccupé par certaines des résolutions déjà adoptées par divers conseils de la région de Toronto et qui lui avaient été communiquées.

Le 17 février 1993, la ville de Mississauga avait adopté une résolution en faveur de la formation d'une administration aéroportuaire locale, confirmant la résolution prise le 26 novembre 1992 par le conseil régional de Peel (dont fait partie Mississauga), en appui aux recommandations d'un rapport qui préconisait la création d'une administration aéroportuaire locale. Pour M. Bandeen et pour la GTRAA, ces résolutions constituaient la preuve que Mississauga appuyait leur projet³⁵⁶.

Toutefois, le 25 février 1993, le conseil régional de Peel avait adopté une autre résolution en faveur de la cession, à une administration aéroportuaire locale, «d'abord et avant tout de l'aéroport international Lester B. Pearson de même que l'aéroport de l'île de Toronto»³⁵⁷.

Les préoccupations exprimées par le ministre Corbeil dans sa lettre du 6 mai 1993, au sujet de l'absence de consensus chez des municipalités concernées, étaient donc tout à fait fondées. Elles ne pouvaient que se confirmer lorsque, le 13 mai 1993, le conseil régional de

³⁵³ Voir *délibérations*, 5:61.

³⁵⁴ Voir *délibérations*, 5:29.

³⁵⁵ Voir *délibérations*, 7:47-48.

³⁵⁶ Voir *délibérations*, 5:51.

³⁵⁷ Voir *délibérations*, 7:48.

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Peel a adopté une autre résolution selon laquelle «[...] la région de Peel s'oppose fermement à la cession de l'aéroport international Lester B. Pearson, si l'aéroport de l'île de Toronto n'est pas cédé en même temps»³⁵⁸.

Selon des fonctionnaires fédéraux, lors d'un entretien avec le ministre des Transports le 13 mai 1993, M. Bandeen a accepté de fournir à ce dernier les résolutions adoptées par les municipalités concernées pour exprimer leur appui inconditionnel en faveur de la création d'une administration aéroportuaire locale chargée de gérer l'aéroport Pearson.

Dans une lettre adressée au ministre le 15 juin 1993, M. Bandeen réclamait la reconnaissance immédiate de l'administration aéroportuaire régionale du Grand Toronto et sa participation aux négociations touchant le réaménagement des aérogares et les autres questions s'y rattachant, en partie pour dissiper les suppositions selon lesquelles «cette accréditation est refusée pour empêcher une administration aéroportuaire locale d'avoir son mot à dire»³⁵⁹. Il y dressait ensuite la liste des différents conseils ayant adopté des résolutions d'appui claires, puis faisait mention de l'adoption par la ville de Mississauga, le 17 février, d'une résolution témoignant de son appui, avant de préciser que le conseil de Mississauga, prié de fournir une résolution explicative, en avait reporté l'étude en raison des controverses soulevées par le projet de construction de nouvelles pistes³⁶⁰.

Selon M. Farquhar, un projet de lettre devant être signée par le ministre avait été préparé dans l'espoir que Mississauga adopte une résolution satisfaisante aux environs du 24 juin 1993, mais cette résolution ne s'est pas matérialisée. Dans une note d'accompagnement destinée au ministre, il était aussi précisé que la lettre ne devrait être finalisée qu'après réception de cette résolution. Plus loin, il était mentionné que «même si la municipalité régionale de Peel confirme à nouveau ses résolutions antérieures au sujet de la cession de l'aéroport de l'île de Toronto, il conviendrait encore d'appuyer la GTRAA, compte tenu de notre expérience récente à Edmonton»³⁶¹. Aux dires de M. Farquhar, l'expérience d'Edmonton avait été compliquée du fait qu'on avait négocié la cession de deux aéroports à la fois, ce qui laissait supposer qu'il serait préférable que la GTRAA se limite à la gestion de l'aéroport Pearson. Par ailleurs, la note en question est décrite comme un exemple assez représentatif des vues, options et suggestions normalement formulés par les fonctionnaires

³⁵⁸ Voir *délibérations*, 7:48.

³⁵⁹ Voir *délibérations*, 21:50.

³⁶⁰ Voir *délibérations*, 7:49.

³⁶¹ Voir *délibérations*, 7:50.

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à l'intention de leur ministre qui, après consultation de ses conseillers politiques et ses collègues, s'en inspire pour rendre sa propre décision³⁶².

Le ministre Corbeil n'a pas envoyé la lettre, il a plutôt choisi de rencontrer M. Bandeen et la mairesse de Mississauga, M^{me} Hazel McCallion, au début de juillet 1993. Lors de ces rencontres, il a d'abord souligné de nouveau l'importance de résolutions uniformes d'appui inconditionnel, puis, dans un deuxième temps, il a exhorté la mairesse de Mississauga à présenter une résolution en faveur de la création d'une administration aéroportuaire locale pour l'aéroport Pearson, dont la formulation n'exclurait pas la possibilité que l'aéroport de l'île de Toronto fasse l'objet d'une cession subséquente. Ces rencontres ont été suivies par l'envoi de lettres le 11 août 1993, dans lesquelles le ministre réitérait sa position et s'engageait à appuyer l'administration aéroportuaire régionale du Grand Toronto, si la ville de Mississauga adoptait la résolution d'appui inconditionnel demandée³⁶³.

En retour, le Ministre a reçu une lettre de M. Bandeen en date du 18 août 1993, dans laquelle celui-ci soutenait que d'après la résolution adoptée le 17 février 1993, le conseil de Mississauga avait déjà accordé son appui inconditionnel à la création d'une administration aéroportuaire locale; il ajoutait toutefois la précision suivante :

Les administrateurs de la GTRAA comprennent que la mairesse de Mississauga refuse d'appuyer la révision de la résolution que vous avez demandée parce qu'elle aimerait que l'AILBP [aéroport Pearson] et l'aéroport de l'île de Toronto soient cédés en même temps et exploités par une administration aéroportuaire locale³⁶⁴.

Il semble que les choses en soient restées là jusqu'à la signature des accords Pearson. À en juger par la teneur d'une lettre du Ministre à M. Bandeen en date du 7 octobre 1993, la situation n'a guère évolué pendant le reste de l'été. En fait, la mairesse McCallion a déclaré, devant le Comité, que le conseil de Mississauga n'avait retiré qu'en 1994 sa condition concernant l'inclusion de l'aéroport de l'île de Toronto dans l'entente de cession.

Le témoignage de la mairesse McCallion donne une idée de la nature et de l'importance du conflit personnel et politique qui a fait échouer la tentative de création d'une administration aéroportuaire locale en 1993. Son antipathie pour l'administration aéroportuaire régionale du Grand Toronto est manifeste dans bon nombre de ses propos,

³⁶² Voir *délibérations*, 7:53.

³⁶³ Voir *délibérations*, 7:50.

³⁶⁴ Voir *délibérations*, 7:51.

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notamment lorsqu'elle la qualifie d'«administration aéroportuaire illégale»³⁶⁵ ou lorsqu'elle décrit le rôle de son président, M. Bandeen, en des termes aussi caustiques que ceux-ci : «Je peux vous assurer que le problème, c'était M. Bandeen»³⁶⁶.

Au début d'octobre 1993, la dissidence de la ville de Mississauga ne faisait pas de doute dans l'esprit du ministre Corbeil. L'insistance de la mairesse McCallion quant à l'inclusion de l'aéroport de l'île de Toronto ne s'était pas volatilisée³⁶⁷. Par ailleurs, la municipalité de Toronto était fermement opposée à l'idée que l'aéroport de l'île de Toronto relève d'une administration aéroportuaire locale³⁶⁸.

L'administration aéroportuaire locale établie à ce moment-là risquait donc fort d'être grandement gênée dans son travail par des différends concernant son mandat même. Le ministre Corbeil avait aussi admis que la collaboration de la ville de Mississauga était essentielle au bon fonctionnement de l'aéroport Pearson dont les terrains se trouvaient presque entièrement sur le territoire de cette ville. L'importance de ce fait avait été établie très clairement par la mairesse, M^{me} McCallion, au cours des audiences. Elle avait réglé des différends avec les constructeurs de l'aérogare 3 au sujet, entre autres, de frais à payer en leur disant que, s'ils ne se pliaient pas aux exigences de Mississauga, ils devraient songer à «construire la plus grande fosse septique qu'ils pourraient trouver à l'aérogare 3, parce que nous n'accepterons pas de les relier au réseau d'aqueduc ou au réseau d'égout»³⁶⁹.

De plus, le Ministre estimait déraisonnable d'oublier les 15 mois de travail consacrés à la préparation de la Demande de propositions, pour poursuivre des négociations avec une administration aéroportuaire locale, dont les assises n'étaient toujours pas fixées et qui risquait d'avoir besoin de beaucoup de temps encore avant de devenir opérationnelle, simplement parce que M. Bandeen entretenait des doutes quant à la capacité du gouvernement de négocier une bonne entente avec les promoteurs³⁷⁰.

Comme nous l'avons vu, les membres de la GTRAA se disaient prêts à aller de l'avant une fois l'organisme dûment constitué au printemps 1993, et ils avaient l'impression que les fonctionnaires du ministère des Transports appuyaient sa reconnaissance³⁷¹. Ils craignaient

³⁶⁵ Voir *délibérations*, 20:7.

³⁶⁶ Voir *délibérations*, 20:8.

³⁶⁷ Voir *délibérations*, 21:62.

³⁶⁸ Voir *délibérations*, 21:55.

³⁶⁹ Voir *délibérations*, 20:06.

³⁷⁰ Voir *délibérations*, 21:62.

³⁷¹ Voir *délibérations*, 25:29.

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surtout que si l'organisme devait être reconnu plus tard, ils seraient obligés de s'accommoder d'une entente négociée entre Transports Canada et les promoteurs, sans leur participation³⁷². Cette crainte a pu être exacerbée par les rapports qu'ils recevaient de M. Chern Heed, alors administrateur de l'aéroport Pearson, lequel était apparemment «extrêmement contrarié» par les accords qui étaient en train de se négocier à la fin de l'été 1993. Ces faits nouveaux n'ont toutefois pas découragé leurs tentatives pour obtenir une reconnaissance, et des discussions ont eu lieu avec le gouvernement fédéral au sujet notamment de la conclusion possible d'ententes sur le partage des recettes³⁷³.

Dès les premiers jours de la campagne électorale de 1993, M. Bandeen a fait part de ses préoccupations aux médias. Dans le *Toronto Star* du 26 septembre, par exemple, il décrit la position du gouvernement dans le dossier de l'aéroport Pearson comme étant «proprement scandaleuse»; interrogé par nous, M. Bandeen a avoué qu'il s'était peut-être un peu «emporté»³⁷⁴.

Selon le ministre Corbeil, le tollé médiatique qui s'est élevé contre les accords de l'aéroport Pearson au cours des mois de septembre et d'octobre 1993 était en grande partie attribuable aux manœuvres d'un mécontent. À son avis, cette campagne faisait largement fi de l'intérêt public et avait pour seul enjeu «la position que cette personne pourrait éventuellement occuper si l'administration aéroportuaire locale se mettait en branle et qui lui permettrait de récupérer les fonctions de prestige qu'elle avait jadis exercées»³⁷⁵.

D) La signature

La conclusion des négociations, la finalisation des accords et la préparation des documents juridiques nécessaires ont été effectuées pendant le mois de septembre 1993³⁷⁶. Selon le négociateur en chef du gouvernement, M. Bill Rowat, aucun changement important n'a été apporté à l'accord de principe annoncé à la fin du mois précédent³⁷⁷. S'il y en avait eu, il aurait fallu que l'accord soit de nouveau ratifié par le Conseil du Trésor, comme il l'avait été en août³⁷⁸.

³⁷² Voir *délibérations*, 5:40.

³⁷³ Voir *délibérations*, 9:54.

³⁷⁴ Voir *délibérations*, 9:41 et 21:95.

³⁷⁵ Voir *délibérations*, 21:94.

³⁷⁶ Voir *délibérations*, 10:57 et 11:61.

³⁷⁷ Voir *délibérations*, 10:84.

³⁷⁸ Voir *délibérations*, 12:41.

Avec la controverse croissante que suscitait à Toronto la signature imminente de cette entente, la question est devenue un enjeu électoral notamment lorsque Jean Chrétien, alors chef de l'opposition, a déclaré le 5 octobre 1993 qu'il allait revoir l'entente si son parti était élu. Il semble aussi qu'une inquiétude croissante se soit emparée des fonctionnaires fédéraux au cours de cette période, conscients qu'ils étaient de la fragilité politique de cette entente et de la nécessité de se préparer à un éventuel examen de leur intervention dans ce dossier. Leur appréhension quant à la façon dont le gouvernement allait les traiter n'était peut-être pas étrangère non plus à leur réaction³⁷⁹.

Selon M^{me} Bourgon, alors sous-ministre des Transports, à deux reprises après l'émission des brefs d'élection on a demandé l'avis de responsables politiques : le ministre des Transports d'abord et, ensuite la Première ministre. Cela illustre bien, selon elle, l'importance pour le gouvernement de se donner comme règle de conduite générale pendant les périodes électorales d'agir avec prudence dès le moment où il y a dissolution du Parlement. Il importait donc de veiller à ce que les représentants élus puissent mesurer la portée de cette règle dans le cas des décisions relatives aux accords de l'aéroport Pearson et de vérifier auprès du gouvernement si celui-ci souhaitait effectivement donner suite à l'entente dans le contexte de l'élection³⁸⁰.

La première demande de décision a été faite au ministre Jean Corbeil à la fin de septembre. Même si M^{me} Bourgon s'est bien gardée de divulguer la teneur de cet entretien confidentiel, il est logique de penser qu'il s'agissait alors de savoir si le Ministre souhaitait toujours signer les principaux documents de location, que le Cabinet l'avait autorisé à ratifier à la fin août³⁸¹.

Le Ministre a signé ces documents le 4 octobre 1993, soit après leur ratification la veille par les représentants de la Pearson Development Corporation³⁸². Le ministre Corbeil assure n'avoir reçu aucune consigne l'enjoignant à redoubler de prudence parce que le Parlement avait été dissous, ou lui faisant part de préoccupations quant à la constitutionnalité de documents de location signés pendant la période électorale³⁸³. Il estimait que l'existence d'une entente ayant force exécutoire avait été confirmée en août, lorsque le Conseil du Trésor avait approuvé l'accord et que le Cabinet avait autorisé la signature des documents pertinents.

³⁷⁹ Voir *délibérations*, 19:65.

³⁸⁰ Voir *délibérations*, 19:57 et 19:59.

³⁸¹ Voir *délibérations*, 19:56.

³⁸² Voir *délibérations*, 12:40.

³⁸³ Voir *délibérations*, 21:98 et 21:100.

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Aux yeux du ministre, il ne restait plus en octobre qu'à régler des formalités juridiques et administratives³⁸⁴.

La deuxième demande faisait écho à la campagne électorale et portait sur la signature, prévue pour le 7 octobre 1993, du dernier groupe de documents devant sceller l'entente. Dans un discours prononcé le 5 octobre 1993, le chef libéral Jean Chrétien avait demandé que la Première ministre reporte la signature de l'entente relative à l'aéroport Pearson jusqu'après l'élection. Le lendemain, il avait déclaré qu'un gouvernement libéral reverrait l'entente tout de suite après son élection. Ces déclarations ont incité M^{me} Bourgon à communiquer avec M. Glen Shortliffe, alors greffier du Conseil privé, pour lui demander s'il ne serait pas à-propos de consulter la Première ministre pour obtenir son avis, étant donné que son successeur éventuel réclamait du gouvernement qu'il modifie l'échéancier prévu pour la signature de l'entente³⁸⁵.

M. Shortliffe a dit au Comité qu'étant donné le caractère politiquement litigieux de la question, il s'est dit d'accord avec M^{me} Bourgon pour consulter la Première ministre³⁸⁶. Il a insisté sur le fait que la nécessité d'une telle consultation découlait du contexte politique et ne devait pas être interprétée comme une remise en question de la part des fonctionnaires quant à la constitutionnalité ou la légalité de signer les derniers documents pendant une campagne électorale³⁸⁷. De l'avis de M. Shortliffe, du point de vue constitutionnel, une élection n'empêche nullement le gouvernement d'exercer ses pouvoirs tant qu'il n'est pas défait, mais les mécanismes habituels de prise de décisions par le Cabinet sont toutefois suspendus et aucune nouvelle initiative ne doit normalement être prise³⁸⁸. C'était aussi l'avis de M^{me} Bourgon, à savoir que la dissolution du Parlement en vue d'une élection n'altère en rien les pouvoirs conférés à un gouvernement en vertu de la loi, mais que les fonctionnaires doivent agir avec prudence dans ce contexte et s'efforcer de respecter le jugement des élus quant aux limites de l'action gouvernementale³⁸⁹.

Par ailleurs, même si les fonctionnaires estimaient que le gouvernement pouvait retarder jusqu'au 7 octobre 1993 la conclusion de l'accord, la décision de ne pas aller de l'avant risquait, selon eux, de soulever des questions d'obligations légales³⁹⁰.

³⁸⁴ Voir *délibérations*, 21:100.

³⁸⁵ Voir *délibérations*, 19:59.

³⁸⁶ Voir *délibérations*, 24:70.

³⁸⁷ Voir *délibérations*, 24:98.

³⁸⁸ Voir *délibérations*, 24:100-101.

³⁸⁹ Voir *délibérations*, 19:60.

³⁹⁰ Voir *délibérations*, 24:71.

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M. Shortliffe a indiqué au Comité que pour lui l'accord avait été conclu à la fin d'août, même s'il ne pouvait entrer en vigueur avant qu'il n'ait pris la forme de documents contractuels³⁹¹. À la lumière de ses discussions avec le conseiller juridique du Conseil privé, M. Shortliffe en est arrivé à la conclusion que le gouvernement avait déjà de très lourdes responsabilités légales, avant même la signature des documents de location le 4 octobre 1993³⁹².

Selon M^{me} Bourgon (qui a pris la peine de préciser au préalable qu'elle n'avait pas de formation juridique et que son point de vue ne se fondait sur aucun avis juridique précis), dès le 18 juin 1993, l'État avait déjà pris une certaine forme d'engagement en signant conjointement avec les promoteurs une lettre d'intention, et ses responsabilités légales se sont accrues avec les mesures prises par la suite, dans le Décret en Conseil du 27 août. Seuls les tribunaux pourraient toutefois établir définitivement ses obligations relativement à chaque étape du processus.

Après avoir consulté la première ministre Campbell le 7 octobre 1993, M. Shortliffe a communiqué la décision à M^{me} Bourgon, qui était d'aller de l'avant. À son tour, celle-ci a envoyé un message par télécopieur à M. Rowat, qui avait été délégué par le ministre Corbeil le 4 octobre pour signer le reste des documents. Elle indiquait à M. Rowat que la Première ministre avait donné l'ordre à M. Shortliffe de procéder à la signature du reste des documents juridiques le 7 octobre 1993, à 14 heures; que le ministre Corbeil était au courant de cette décision et y souscrivait; et qu'en conséquence, M. Rowat était autorisé à signer les documents en question³⁹³.

Les dix-neuf documents nécessaires ont été signés le 7 octobre 1993, dont quatre relatifs aux conditions préalables à la conclusion du contrat de l'aéroport Pearson, quatorze documents relatifs à des versions abrégées des accords déjà signés et des accords annexes portant sur des questions pratiques mineures et un document final autorisant la communication de documents placés en main tierce. Après la signature de tous les documents, à l'exception de celui autorisant leur communication, M. Rowat les a remis au dépositaire légal, du cabinet Cassels Brock & Blackwell, qui s'en est chargé conformément aux conditions de la mise en main tierce.

M. Rowat a ensuite jugé que les documents étaient en ordre et que les conditions préalables à leur communication étaient respectées, puis a signé l'autorisation appropriée. Selon M. Rowat, le contrat de l'aéroport Pearson a été conclu à partir du moment, et

³⁹¹ Voir *délibérations*, 24:69.

³⁹² Voir *délibérations*, 24:72.

³⁹³ Voir *délibérations*, 10:75.

seulement à partir du moment où ce document final a été ratifié par lui et par M. Coughlin, au nom du promoteur (Lettre de William Rowat en date du 22 septembre 1995 à l'intention du sénateur Finlay MacDonald). Le document autorisant la communication des documents a été signé aux environs de 16 heures, le 7 octobre 1993³⁹⁴.

3. Observations et conclusions

A) Le processus

Comme aux étapes précédentes, nous avons systématiquement demandé aux fonctionnaires qui ont joué un rôle important à cette étape ce qu'ils pensaient du processus auquel ils ont participé. Nous leur avons notamment demandé si l'obligation de faire vite avait nui à leur travail; s'ils avaient fait l'objet d'ingérences politiques dans leur travail; si les lobbyistes avaient influencé leurs décisions ou étaient intervenus indûment dans le dossier et si, de façon plus générale, ils étaient convaincus que le processus s'était déroulé régulièrement.

Tous les fonctionnaires responsables, sans exception, ont confirmé l'intégrité du processus et des personnes qui y ont participé. En particulier, M. Jean Corbeil, ministre des Transports à l'époque³⁹⁵, M^{me} Huguette Labelle, sous-ministre jusqu'au 25 juin 1993³⁹⁶, M^{me} Jocelyne Bourgon, sous-ministre après le 25 juin³⁹⁷, M. Ran Quail, négociateur en chef en janvier et au début de février 1993, M. David Broadbent, négociateur en chef du 12 février 1993 au 15 juin 1993³⁹⁸ et M. William Rowat, sous-ministre associé des Transports durant cette période et négociateur en chef du 15 juin au 7 octobre 1993³⁹⁹, ont attesté la régularité du processus qui a suivi l'annonce de la meilleure offre globale, notamment les discussions sur les problèmes à régler avant les négociations, les négociations proprement dites, l'approbation des contrats par le Cabinet et leur signature.

Il importe cependant de noter que, si M. Broadbent a affirmé sans réserve qu'on ne pouvait douter de l'intégrité du processus et des personnes concernées, il a ajouté que le processus présentait néanmoins une faille dans la mesure où la question des Principes

³⁹⁴ Voir *délibérations*, 22:141.

³⁹⁵ Voir *délibérations*, 21:100; 21:65; 21:67-68; 21:71 et 21:96.

³⁹⁶ Voir *délibérations*, 8:40.

³⁹⁷ Voir *délibérations*, 19:108.

³⁹⁸ Voir *délibérations*, 9:83.

³⁹⁹ Voir *délibérations*, 11:30.

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directeurs et celle de la prolongation du bail de 40 ans – qu'Air Canada considérait comme entendue – n'étaient pas encore réglées au moment de la parution de la demande de propositions, ce qui à son avis a indûment compliqué les négociations⁴⁰⁰.

M. Glen Shortliffe, greffier du Conseil Privé durant toute la période⁴⁰¹ et M. Mel Cappe, un haut fonctionnaire du Conseil du Trésor qui a participé au processus, sont eux aussi tout à fait convaincus de l'intégrité du processus⁴⁰². Par ailleurs, M. Stehelin, de Deloitte & Touche, a dit qu'il n'avait personnellement senti dans son travail ni pressions ni ingérence de la part des responsables politiques⁴⁰³.

Nous avons par ailleurs posé les mêmes questions à des fonctionnaires qui ont fait partie des équipes dirigées par les personnes que nous venons d'énumérer. La constatation est la même : tous estiment que les règles établies et les normes de l'administration publique avaient été pleinement respectées.

Au cours de nos audiences, nous n'avons rien trouvé qui permette d'infirmier la conviction unanime des participants quant à l'intégrité totale du processus, depuis l'annonce de la meilleure offre globale jusqu'à la signature des contrats. Les mécanismes permettant d'empêcher que les intérêts privés ne l'emportent sur l'intérêt public, tel qu'interprété par les représentants du peuple démocratiquement élus, étaient pleinement opérationnels durant cette phase, comme durant les phases antérieures.

B) La politique

La négociation et la conclusion du contrat d'aménagement des aéroports 1 et 2 de l'aéroport Pearson soulèvent deux questions essentielles. La première est du même ordre que celle que nous avons étudiée lors des étapes antérieures relativement à l'évolution de la situation entourant l'aéroport Pearson. S'agissant de la dernière phase, la question devient la suivante : des changements se sont-ils produits entre le 7 décembre 1992, lorsque la processus de discussion et de négociation a été amorcé, et la date de signature des contrats, qui auraient justifié l'arrêt du processus?

La seconde question s'applique uniquement à la dernière phase du processus. Elle concerne la valeur de l'entente finale : l'accord conclu entre le gouvernement du Canada et

⁴⁰⁰ Voir *délibérations*, 9:122.

⁴⁰¹ Voir *délibérations*, 24:105.

⁴⁰² Voir *délibérations*, 14:12.

⁴⁰³ Voir *délibérations*, 13:28.

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la Pearson Development Corporation dans les documents en date du 7 octobre 1993 était-il respectueux de l'intérêt public? Cette question sera traitée après l'analyse qui suit des circonstances dans lesquelles l'entente a été conclue.

D'après nos informations, deux changements potentiellement lourds de conséquences se sont produits après 1992 dans la situation générale de l'aéroport Pearson. Premièrement, on a fait des progrès sensibles vers la création d'une administration aéroportuaire locale, ce qui soulevait de nouveau la question de savoir s'il ne vaudrait pas mieux différer les travaux de réaménagement jusqu'à ce qu'une administration agréée soit instituée pour les diriger. Deuxièmement, l'émission des brefs d'élection le 8 septembre 1993 signifiait que la date de signature prévue tombait durant la campagne électorale. On s'est alors interrogé sur l'opportunité de reporter la date de signature, surtout que l'entente faisait l'objet d'une controverse grandissante.

i) L'évolution du dossier de l'AAL

L'annonce de la meilleure proposition globale semble avoir très fortement incité les divers groupes qui s'étaient opposés dans le dossier de l'administration aéroportuaire locale de Toronto durant la majeure partie de 1992, à s'unir. À la fin de mars 1993, une organisation unique constituée en société sans but lucratif sous le nom de Greater Toronto Regional Airport Authority (GTRAA) cherchait à se faire agréer par le gouvernement fédéral. Cependant, le conseil régional de Peel, qui représente Mississauga, et les autres conseils ne s'entendaient toujours pas sur l'étendue des compétences de l'administration aéroportuaire proposée. Les divergences d'opinion ont persisté jusqu'à la signature des accords, et même au-delà, sur la question de savoir si le seul aéroport Pearson ou cet aéroport et celui de l'île de Toronto devraient relever de l'administration.

Comme nous l'avons déjà indiqué, il semble que le ministre Corbeil n'ait pas été du même avis que certains de ses fonctionnaires sur la question de savoir si la GTRAA pouvait être agréée par les autorités fédérales en juin 1993. Il faut reconnaître que les ministres et les fonctionnaires ont parfois des divergences de vues, et que cela ne signifie pas nécessairement qu'un des deux camps fasse fi de l'intérêt du public. Les questions de politique publique sont rarement simples et contiennent généralement une foule d'éléments sur lesquels les gens peuvent en toute bonne foi avoir des avis contraires. M. Farquhar, le fonctionnaire concerné, l'a bien illustré lorsqu'il a fait remarquer que les ministres prennent souvent des décisions à partir d'informations que n'ont pas les fonctionnaires, ou en fonction de considérations qui leur échappent⁴⁰⁴.

⁴⁰⁴ Voir *délibérations*, 7:53.

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Pour les mêmes raisons, on aurait manifestement tort de supposer d'emblée qu'un ministre fait erreur ou est de mauvaise foi chaque fois qu'il ne partage pas l'opinion d'un fonctionnaire. Si c'était le cas, et si les fonctionnaires avaient toujours raison, il serait inutile d'entraver leur action en leur demandant de rendre des comptes à leur ministre et au Parlement. On pourrait tout simplement confier à l'administration publique le soin de gouverner et s'affranchir des contraintes de la démocratie.

Il est très vraisemblable que, les désaccords au sein du Ministère et entre le Ministre et les membres de la GTRAA au sujet de l'agrément de l'administration aéroportuaire locale tiennent en partie à l'imprécision de la politique qui avait été élaborée à l'intention du Ministre par ses fonctionnaires. Selon les fonctionnaires interrogés, la politique n'exigeait pas le consentement unanime des municipalités concernées. Elle ne précisait pas toutefois les critères sur lesquels on devait se fonder pour déterminer quelles étaient les «principales administrations publiques» de la région desservie par l'aéroport dont il fallait obtenir l'accord. De plus, tout ce que la politique indiquait, c'était que les administrations concernées devaient adopter une résolution approuvant la structure de l'AAL proposée, ce qui laissait beaucoup de latitude dans l'interprétation des divergences entre résolutions qui seraient acceptables compte tenu des objectifs de la politique.

Il ne serait donc pas illogique de soutenir qu'au 15 juin 1993, la GTRAA respectait à la lettre la politique, car tous les conseils dont le gouvernement fédéral exigeait le consentement avaient adopté une résolution appuyant l'administration en question. La différence entre Mississauga et les autres municipalités portait sur l'étendue des attributions de la GTRAA et non sur sa structure.

Comme le ministre Corbeil l'a forcément constaté lorsqu'il a rencontré la mairesse de Mississauga, M^{me} McCallion, et les représentants de la GTRAA au début de juin 1993, les divergences de vues au sujet de l'étendue des attributions n'étaient pas seulement importantes, elles étaient aussi très personnelles. L'antipathie de M^{me} McCallion pour M. Bandeen, le président de la GTRAA, était encore manifeste lorsque celle-ci a comparu devant nous, deux ans après les événements.

De plus, dans la résolution adoptée le 13 mai 1993, le conseil régional de Peel ne disait pas simplement souhaiter que les deux aéroports relèvent de la GTRAA. Il disait explicitement qu'il était contre la cession de l'aéroport international Lester B. Pearson à la GTRAA si celle-ci ne prenait pas en même temps en charge l'aéroport de l'île de Toronto. Autrement dit, la cession de l'aéroport Pearson ne devait pas se produire avant celle de l'aéroport de l'île de Toronto. Pourtant, la ville de Toronto, qui administrait l'aéroport de l'île de concert avec Transports Canada et la Commission du port de Toronto, avait déjà fait savoir publiquement qu'elle était contre son transfert à une administration aéroportuaire locale.

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Même si les critères fédéraux de reconnaissance des administrations aéroportuaires locales intéressées n'exigeaient pas la complète unanimité des principales municipalités, l'appui de la ville de Mississauga était essentiel pour des raisons pratiques évidentes. Comme on le sait, le fait que l'aéroport Pearson se trouve dans cette ville donnait à la mairesse, M^{me} McCallion, beaucoup de pouvoir. Dans ses pourparlers avec les promoteurs de l'aérogare 3, M^{me} McCallion a montré qu'elle était très consciente de ce pouvoir et elle a défendu très habilement les intérêts de Mississauga tels qu'elle les concevait. Il aurait été irresponsable de la part du gouvernement fédéral de reconnaître la GTRAA vu l'importance des différends qui continuaient d'opposer les participants.

Il aurait été tout aussi inapproprié de reporter les travaux de réaménagement jusqu'à ce que la question de l'administration aéroportuaire locale soit réglée. L'information dont disposait le Ministre à l'été et à l'automne de 1993 laissait subsister peu de doutes quant à ce qui arriverait si les négociations étaient différées pour y faire participer une administration aéroportuaire locale. La question de l'inclusion de l'aéroport de l'île de Toronto n'a été réglée qu'en 1994, lorsque M^{me} McCallion a renoncé à contrecœur à la position qu'elle avait soutenue jusqu'alors. À l'été de 1993, rien ne permettait d'imaginer que cela avait des chances d'arriver. On avait donc à l'époque toutes les raisons de croire que le fait d'attendre que soient aplanies les divergences de vues entre Mississauga et les autres membres de la GTRAA, n'aurait eu pour résultat que de reporter le projet indéfiniment. Comme le ministre Corbeil nous l'a rappelé, on aurait alors réduit à néant près de trois ans de travail par des fonctionnaires et plusieurs ministres. Si on avait choisi de le faire, cela aurait à coup sûr été qualifié, à juste titre d'ailleurs, de gaspillage éhonté.

Cela aurait aussi été incompatible avec l'idée que le gouvernement se faisait des mesures à prendre, qui étaient dictées par les réalités auxquelles les usagers de l'aéroport Pearson devaient faire face, comme on l'a vu précédemment. Attendre encore, cela aurait signifié ne pas tenir compte de la nécessité de moderniser les aérogares, besoin que le gouvernement avait reconnu en 1990, et qui n'avait pas vraiment diminué entre 1990 et 1993. En fait, les besoins étaient de plus en plus pressants à l'aérogare 1. Il aurait été tout aussi irresponsable de refuser de l'admettre en 1993 qu'en 1990, sans compter le prix à payer par le public pour ce manque de cohérence.

Pour conclure, nous pensons qu'il aurait été irresponsable de retarder le réaménagement des aérogares en 1993 dans l'espoir que les problèmes politiques entourant la création de l'administration aéroportuaire locale soient bientôt résolus. Cela aurait été prendre ses désirs pour des réalités au lieu de s'attaquer concrètement aux problèmes des aérogares 1 et 2 de l'aéroport Pearson.

ii) Les élections

L'annonce des élections est venue compliquer les choses durant les semaines où l'on mettait la dernière main à l'accord Pearson, surtout que ces accords étaient déjà passablement controversés. Comme on l'a vu, les accords Pearson, qui, au départ, faisaient l'objet d'une controverse essentiellement locale, alimentée par les intérêts directs de certaines personnes, étaient devenus, au début d'octobre 1993, un enjeu électoral. Le chef du Parti libéral, que les sondages donnaient déjà gagnant et qui selon toute probabilité formerait le prochain gouvernement, avait publiquement enjoint à la première ministre Campbell de différer la signature des accords, faute de quoi ils seraient remis en question si un gouvernement libéral était élu.

Comme on l'a vu, les fonctionnaires considéraient que l'accord avait été conclu à la fin du mois d'août 1993 et que le gouvernement, s'il pouvait certes refuser de signer les documents juridiques afférents, risquait de faire face à des responsabilités légales importantes s'il le faisait sans l'accord des promoteurs. Selon le ministre, ce qu'il restait à faire en octobre se ramenait à de simples formalités; il ne s'agissait pas, en soi, d'une importante décision gouvernementale.

Durant nos audiences, nous avons invité un groupe d'universitaires qualifiés à débattre des enjeux constitutionnels et politiques auxquels faisaient face la Première ministre et le ministre des Transports au début d'octobre. Ce groupe était composé de M. J.R. Mallory, professeur émérite de l'Université McGill, de M. John Wilson, professeur de l'Université de Waterloo et de M. Andrew Heard, professeur de l'Université Simon Fraser.

M. Mallory fait une distinction entre la période de la campagne électorale et la période de transition, qui est l'intervalle entre la défaite du gouvernement à la Chambre ou aux élections et l'installation du nouveau gouvernement.

Selon le professeur Mallory, pendant les campagnes électorales, les gouvernements conservent le pouvoir et le devoir de prendre les décisions qu'ils jugent nécessaires⁴⁰⁵. En pratique, il se prend alors peu de décisions importantes, parce que les ministres sont habituellement en campagne. Cependant, cela arrive à l'occasion. À preuve, la décision du gouvernement Diefenbaker de dévaluer le dollar pendant la campagne de 1962. Les électeurs ont le dernier mot sur ces décisions, le jour du scrutin, et le nouveau gouvernement peut décider de les réviser et de les modifier, si c'est possible.

⁴⁰⁵ Voir *délibérations*, 24:5-6.

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D'après le professeur Mallory, la situation est différente dans l'intervalle entre la défaite d'un gouvernement et l'installation de son successeur. Selon lui, de nombreux précédents constitutionnels indiquent qu'un gouvernement défait aux urnes devrait «éviter de prendre des décisions lourdes de conséquences et d'effectuer des nominations importantes»⁴⁰⁶.

S'appuyant sur deux raisonnements distincts, le professeur Heard en est arrivé à une conclusion semblable. Le premier repose sur des précédents historiques, et le second, sur l'interprétation de principes constitutionnels plus généraux.

En ce qui concerne les précédents historiques susceptibles de créer une convention constitutionnelle, le professeur Heard a soutenu que rien n'indique l'existence d'une règle obligeant les gouvernements à limiter leurs actions en période électorale. Les discussions autour d'une règle éventuelle ne portent que sur la période qui suit les élections. Le professeur Heard a cité, à cet égard, un certain nombre de cas au Canada où l'on a clairement reconnu qu'un gouvernement défait aux urnes ou à la Chambre devait s'en tenir aux affaires courantes⁴⁰⁷.

Le professeur Heard a également soutenu que les précédents historiques ne sont pas l'unique source de normes et que des principes constitutionnels en soi peuvent permettre de dégager des règles même en l'absence de précédents. Dans cet ordre d'idées, il a affirmé que le principe de la responsabilité gouvernementale sous-entend au départ le pouvoir d'un Cabinet qui jouit de la majorité à la Chambre des communes de fournir au gouverneur général des avis qui le lient. Cela suppose que «...le cabinet est libre de faire comme bon lui semble tant qu'il n'a pas été défait par un vote de confiance à la Chambre des communes ou lors d'une élection générale»⁴⁰⁸. La signature des accords de Pearson pendant la période électorale n'a donc enfreint aucune convention constitutionnelle⁴⁰⁹.

Le professeur Wilson différerait d'opinion. Soulignant au départ qu'il peut y avoir des conventions de bon comportement gouvernemental sans qu'elles soient énoncées explicitement ou illustrées par des causes exemplaires, il a déclaré ce qui suit :

Il s'agit d'un principe bien établi du gouvernement parlementaire selon lequel, lorsque le Parlement a été dissous et qu'une campagne électorale est en cours, la latitude dont jouit le gouvernement pour prendre des décisions est

⁴⁰⁶ Voir *délibérations*, 24:6.

⁴⁰⁷ Voir *délibérations*, 24:18.

⁴⁰⁸ Voir *délibérations*, 24:19-20.

⁴⁰⁹ Voir *délibérations*, 24:21.

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nettement limitée et les décisions devraient porter uniquement sur l'administration des affaires courantes, sauf, bien sûr, si elles découlent d'une situation d'urgence⁴¹⁰.

Le professeur Wilson a invoqué deux motifs pour établir le bien-fondé de cette hypothétique convention. Premièrement, lorsque le Parlement est dissous, l'exécutif cesse d'être soumis aux contraintes parlementaires qui sont garantes de sa responsabilité. Il faudrait donc réduire en conséquence les pouvoirs de l'exécutif pendant cette période et respecter les limites énoncées dans la convention de transition⁴¹¹.

Deuxièmement, un gouvernement peut prendre une décision pendant la campagne électorale et être ensuite défait le jour des élections. En pareil cas, il n'aura jamais à assumer les conséquences de sa décision. Le genre de contrôle qu'exercent les médias pendant une campagne n'équivaut pas à celui du Parlement, et ne saurait être aussi contraignant pour le gouvernement. Les gouvernements devraient donc s'en tenir à des décisions sur les affaires courantes, sauf en cas d'urgence.

À la réflexion, nous ne trouvons pas les arguments du professeur Wilson convaincants. Il ne nous paraît pas du tout évident, comme il le prétend, qu'une convention puisse exister s'il n'y a pas eu de précédent ou si elle n'a pas été attestée. Une «convention» devient alors une notion abstraite que n'importe qui peut invoquer à propos de n'importe quoi. Or, les conventions constitutionnelles sont plus que des convictions personnelles de ce que le gouvernement devrait faire ou ne pas faire; ce sont des règles de comportement généralement reconnues, et on ne peut prétendre qu'elles existent en l'absence d'une quelconque preuve.

Deuxièmement, nous ne sommes pas d'accord pour dire que la convention de transition s'applique automatiquement lorsque le Parlement ne siège pas et qu'on peut l'invoquer n'importe quand pour demander au gouvernement de rendre des comptes. Si c'était le cas, le gouvernement serait limité dans son action quand il ajourne l'été et l'hiver, et en période électorale. D'après cette norme peu convaincante, le gouvernement libéral nouvellement élu aurait enfreint la Constitution en décidant d'annuler les accords Pearson en l'absence du Parlement (le Parlement n'a repris ses travaux que le 17 janvier 1994, soit six semaines après l'annonce de l'annulation). Pourtant, personne n'a prétendu que c'était le cas.

Troisièmement, nous ne sommes pas d'accord avec l'argument selon lequel un gouvernement peut prendre des décisions, être ensuite défait et ne jamais avoir à répondre

⁴¹⁰ Voir *délibérations*, 24:9.

⁴¹¹ Voir *délibérations*, 24:9.

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de ses décisions. Au contraire, comme le professeur Heard nous l'a rappelé, dans notre régime parlementaire, l'obligation de rendre des comptes est capitale en période électorale⁴¹². Le gouvernement est alors directement responsable devant le peuple plutôt que devant ses représentants à la Chambre. Pour un gouvernement dont la performance n'est pas jugée satisfaisante les conséquences sont beaucoup plus immédiates qu'au Parlement. La période électorale ne retire donc pas au gouvernement la responsabilité de ses décisions.

Même si les principaux arguments du professeur Wilson étaient valables, ils ne prouvent pas l'existence d'une convention. Ils donnent tout au plus une raison convaincante d'en adopter une. Le fait que les deux autres universitaires qui sont venus témoigner avec le professeur Wilson ont exprimé un point de vue diamétralement opposé au sien, montre bien qu'il n'existe pas encore de convention. S'il y en avait une, il n'y aurait pas de controverse véritable autour de son existence.

Pour terminer, nous pensons qu'il vaut la peine de souligner que les points de vue des professeurs Mallory et Heard rejoignent ceux des hauts fonctionnaires avec lesquels nous avons abordé la question, au cours de nos audiences. Les commentaires de M^{me} Bourgon sur la nécessité de faire preuve de prudence ne laissent pas croire à l'existence d'une convention «de transition», contrairement à ce que soutenait le professeur Wilson⁴¹³. Ils font ressortir la nécessité que les fonctionnaires redoublent de prudence en période électorale afin que leurs actions correspondent à ce que le public juge approprié. Comme on l'a vu, le ministre des Transports ne considérait pas la conclusion de l'entente, qui avait été annoncée en août, comme un fait nouveau. C'est pourquoi il n'avait aucun doute sur l'opportunité de signer les accords.

Nous sommes donc d'accord avec les professeurs Mallory et Heard sur ce point. L'action du gouvernement, entre le moment de l'émission des brefs d'élection et celui du scrutin, n'est assujettie à aucune convention constitutionnelle restrictive. Le premier ministre et le ministre des Transports n'ont aucunement enfreint la Constitution à l'automne 1993 en jouant leur rôle dans la conclusion de l'entente Pearson. Au contraire, ils n'ont fait que leur devoir en continuant de gouverner jusqu'à ce que la population se prononce, le jour des élections.

⁴¹² Voir *délibérations*, 24:30-31.

⁴¹³ Voir *délibérations*, 24:13-14.

iii) L'entente finale

Le projet visé par les accords Pearson était-il dans l'intérêt public? Il faudra examiner cette question une fois qu'il aura été établi qu'il ne s'est rien produit entre décembre 1992 et octobre 1993 qui aurait justifié ou nécessité l'arrêt du processus.

Une première conclusion ressort de nos audiences : aucun raisonnement simple ne permet de répondre facilement à cette question. Les accords Pearson sont extrêmement détaillés et compliqués. Les négociations qui ont abouti à ces accords dans leur forme finale ont nécessité une série complexe de compromis. Étant donné la nature de ces compromis, on ne peut pas considérer isolément un élément de l'entente en fonction d'une norme qui ne tient pas compte de la relation des éléments avec l'ensemble de l'entente.

Par exemple, l'État a dû faire la part entre un rendement financier intéressant pour lui et une entente procurant aux promoteurs un rendement suffisant pour qu'ils puissent réaliser les travaux. En exigeant un taux trop élevé, l'État aurait compromis le projet et risqué de se retrouver avec les aéroports sur les bras après la faillite ou le retrait des promoteurs.

De même, l'État et les promoteurs devaient ajuster leurs arrangements de manière à ne pas trop alourdir le fardeau des compagnies aériennes et des autres locataires. Un fardeau trop lourd aurait incité les locataires à se tourner vers d'autres aéroports ou à cesser leurs activités, ce qui, en fin de compte, aurait fait diminuer les revenus de l'État et des promoteurs. De plus, si un locataire avait répercuté sur les voyageurs l'augmentation de ses coûts, Pearson aurait cessé d'être concurrentiel avec d'autres aéroports, ce qui aurait entraîné une diminution des revenus de l'État et des promoteurs, par suite de la baisse continue des affaires⁴¹⁴.

A) Une bonne ou une mauvaise affaire?

Les accords Pearson répondaient à l'objectif principal qu'on s'était fixé en lançant ce projet en 1990. En effet, ils auraient permis la remise en état immédiate des aéroports, sans que les contribuables canadiens aient à payer un sou. Ils auraient également garanti l'accroissement à long terme de la capacité des installations, encore une fois sans frais pour le contribuable. On aurait ainsi transformé une aéroport 1 décrépite et une aéroport 2, dont la capacité d'accueil de vols transatlantiques était limitée, en une installation de niveau mondial. La transaction aurait eu d'importants avantages indirects pour la population, notamment la création de nombreux emplois locaux et l'augmentation des emplois de longue durée et des recettes découlant de la création, en matière d'aménagement d'aéroports, d'une

⁴¹⁴ Voir *Délibérations*, 12:18.

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expertise monnayable ailleurs au pays et à l'étranger. Et tout cela sans avoir à puiser dans les poches du contribuable.

L'avantage majeur de la transaction tient au fait que le public voyageur aurait bénéficié d'installations de niveau mondial qui n'auraient rien coûté aux contribuables et auraient même permis à l'État de réaliser certains profits. Les promoteurs auraient investi 750 millions de dollars pendant la durée des accords. Dire que les contribuables auraient profité directement de ces investissements est peut-être exagéré, étant donné que les compagnies aériennes et les autres locataires auraient été les premiers bénéficiaires d'une partie des investissements, avant les passagers. Quoi qu'il en soit, si le gouvernement avait conservé les aéroports et financé les travaux d'aménagement de la façon habituelle, les contribuables auraient été mis à contribution. Ils n'auraient peut-être pas eu à débours 750 millions, ni reçu autant en retour, mais ils auraient quand même payé.

Les chapitres précédents ont démontré, que les travaux d'aménagement étaient nécessaires, que le gouvernement ne pouvait en assumer le coût et qu'il n'y avait pas d'administration aéroportuaire locale pouvant prendre le relais. Dans les circonstances, on peut difficilement concevoir qu'une entente qui permettait de réaliser, grâce à des investissements privés de 750 millions, des travaux d'aménagement qu'il aurait fallu autrement financer avec les deniers publics, ne puisse pas s'avérer avantageuse pour les Canadiens. La véritable question est maintenant de savoir si cette affaire aurait pu l'être davantage.

B) Aurait-on pu faire une meilleure affaire?

Si l'on s'entend pour dire que cet accord aurait été une bonne chose pour le Canada, on peut quand même se demander si le gouvernement n'aurait pas pu obtenir mieux. Le fait qu'il soit toujours possible d'obtenir mieux, quelle que soit la qualité de l'accord conclu, doit ici nous inciter à la plus grande circonspection. Car, si nous voulons que notre examen critique de ces accords soit empreint de sagesse, nous nous devons également de considérer avec réalisme les critères de comparaison.

Nous avons discuté des normes de comparaison avec plusieurs témoins, en particulier M. Paul Stehelin, conseiller chez Deloitte & Touche, dont les avis concernant les taux de rendement et d'autres questions financières ont été d'une grande utilité aux négociateurs fédéraux durant la conclusion des accords. Selon M. Stehelin, il a été particulièrement difficile de trouver des projets vraiment comparables à celui du réaménagement de l'aéroport Pearson.

La British Airport Authority, société par actions inscrite à la bourse de Londres, était peut-être le seul point de comparaison possible. M. Stehelin nous a toutefois donné une idée

de la difficulté d'une telle comparaison en nous exposant les résultats d'une étude réalisée par la Monopolies and Mergers Commission britannique sur les recettes de sources monopolistes et non monopolistes dans le cas de la British Airport Authority. L'existence d'un apport considérable de recettes non monopolistiques constitue la principale différence entre des entreprises comme la British Airport Authority et le projet de réaménagement de Pearson, d'une part, et des services publics proprement dits, d'autre part. Les services publics, comme tous les autres monopoles, peuvent répercuter l'augmentation de leurs coûts sur le consommateur. Leurs risques étant donc moins élevés, ils peuvent se contenter de rendements plus bas : on a parlé de taux de 11,5 à 12,3 p. 100 dans la conjoncture économique canadienne de 1993. Des taux de rendement plus élevés sont toutefois nécessaires pour soutenir des activités commerciales comportant des risques importants comme ceux que présentent les investissements dans les infrastructures aéroportuaires. Après avoir évalué le niveau de risque du projet d'aménagement des aérogares de l'aéroport Pearson, M. Stehelin en est venu à la conclusion que ce projet pouvait se comparer à la British Airport Authority plutôt qu'à un simple service public. Pour lui, prétendre qu'un aéroport constitue un monopole, c'est ne rien comprendre aux aéroports, qui sont sujets aux fluctuations du marché⁴¹⁵.

En ce qui concerne le rendement des investissements, on nous a dit qu'en 1993 la British Airport Authority n'aurait envisagé aucun nouveau projet qui ne lui aurait pas garanti un rendement après impôt de 18 p. 100⁴¹⁶. Cela a amené M. Stehelin à conclure, dans son rapport d'août 1993, qu'un rendement de l'ordre de 12 à 16 p. 100 était raisonnable. Au cours de cette année-là, le taux de rendement prévu de la Pearson Development Corporation a été négocié à la baisse et ramené d'environ 18 p. 100 à 14 p. 100, dans l'accord final⁴¹⁷.

Le rendement pour l'État a, lui aussi, été abaissé pendant les négociations, notamment pour éviter aux compagnies aériennes une hausse importante de leurs frais à court terme. Selon M. Rowat, qui a négocié cette partie de l'accord, on voulait, en définitive, faire en sorte que le montant des loyers payables à l'État ne soit pas inférieur à celui garanti par la deuxième meilleure proposition⁴¹⁸. On est arrivé à ce que M. Desmarais a décrit comme un moyen terme entre l'offre initiale de Paxport, soit 1,2 milliard de dollars, et les 642 millions indiqués dans celle de Claridge. Le rendement prévu indiqué dans l'accord définitif se chiffrait à 843 millions, ce qui était légèrement supérieur aux 815 millions de dollars qui

⁴¹⁵ Voir *délibérations*, 13:18.

⁴¹⁶ Voir *délibérations*, 13:16.

⁴¹⁷ Voir *délibérations*, 12:9.

⁴¹⁸ Voir *délibérations*, 10:88.

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constituaient l'estimation «de référence», faite par Transports Canada, de la valeur nette actualisée des aéroports pour l'État⁴¹⁹.

Dans son rapport du 17 août 1993, Deloitte & Touche confirme l'avis des négociateurs en concluant qu'une valeur nette actualisée du bail foncier constituait, à 800 ou 900 millions de dollars, «une juste valeur marchande pour l'État»⁴²⁰. Le fait que l'on soit arrivé à un taux raisonnable en appliquant la norme utilisée par M. Stehelin mérite d'être signalé quand on sait qu'il ne s'agissait pas d'une simple transaction commerciale. En effet, on réalisait aussi des objectifs non pécuniaires, comme le souhaitait M. Broadbent, qui disait n'être pas certain que la Couronne devrait tirer des revenus importants de Pearson et pensait qu'elle devrait se contenter d'exploiter un bon aéroport⁴²¹.

Au cours des négociations, on s'était également efforcé d'éviter aux compagnies aériennes et, indirectement, aux passagers, des frais excessifs qui auraient compromis la compétitivité de l'aéroport⁴²². C'est Air Canada qui a finalement joué un rôle déterminant dans cet aspect de la transaction. À l'été de 1993, elle a, comme nous le savons, conclu une entente avec le promoteur afin d'abaisser ses coûts, la Couronne ayant accepté de reporter, pendant trois ans, la perception des loyers fonciers et le promoteur ayant convenu de baisser le taux de capitalisation et de verser aux compagnies aériennes 10 p.100 des recettes nettes de l'exploitation des concessions.

Sur ce point, le «verdict» ne saurait être le fait d'un tiers. Air Canada était satisfaite, sinon elle n'aurait pas accepté la proposition. Voici ce qu'en pense M. Fiore, un intervenant important d'Air Canada :

Au bout du compte, et au terme de négociations longues et difficiles, Air Canada accepta la proposition. À défaut d'avoir une participation au capital, cette solution était la meilleure pour Air Canada et elle lui permettait d'apporter des améliorations très nécessaires à un juste coût⁴²³.

En regardant les accords aujourd'hui, dans le contexte de 1995, les représentants d'Air Canada en ont reconnu l'opportunité ainsi que l'intérêt des conditions financières qui avaient

⁴¹⁹ Voir *délibérations*, 12:30.

⁴²⁰ Rapport, p. 6.

⁴²¹ Voir *délibérations*, 10:28.

⁴²² Voir *délibérations*, 10:88.

⁴²³ Voir *délibérations*, 12:78.

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été négociées. Selon le directeur actuel de l'immobilier chez Air Canada, M. David Robertson :

1993 était le moment idéal pour entreprendre les travaux de réaménagement de l'aérogare 2, étant donné que le nombre de voyageurs était moins élevé. [...] le public voyageur aurait été beaucoup moins dérangé qu'il ne le sera maintenant ou dans l'avenir⁴²⁴.

Commentant la valeur globale de l'entente devant le comité, le ministre Corbeil en a parlé avec une fierté manifeste :

«Une entente finale totalement respectueuse de l'intérêt des contribuables canadiens et du public voyageur, et susceptible de générer des retombées économiques importantes et bénéfiques pour la ville de Toronto et la région de Toronto, pour la province de l'Ontario et pour le Canada tout entier, était finalement conclue»⁴²⁵.

S'ils se sont abstenus de donner leur avis sur la valeur de l'accord pour l'intérêt public, les fonctionnaires ont tout de même parlé de l'atteinte des objectifs définis par le gouvernement dans la demande de propositions. Essentiellement ces objectifs étaient les suivants: les travaux de réaménagement nécessaires devaient être réalisés; le gouvernement ne devait pas se trouver financièrement plus mal que s'il avait continué d'exploiter les aérogares; l'aéroport devait demeurer concurrentiel; les frais supplémentaires exigés des compagnies aériennes et, donc des passagers, ne devaient pas être excessifs. **Pour M. William Rowat, dont les propos prennent une importance toute particulière étant donné le rôle qu'il a joué dans l'aboutissement des négociations, «l'accord final respectait ces principes directeurs»⁴²⁶.**

⁴²⁴ Voir *délibérations*, 12:78.

⁴²⁵ Voir *délibérations*, 21:10.

⁴²⁶ Voir *délibérations*, 11:24.

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Le prédécesseur de M. Rowat, M. Broadbent, associé au dossier Pearson en qualité de conseiller, a profité de la grande liberté d'expression dont il jouissait en tant que fonctionnaire à la retraite :

«Jamais je n'aurais pris part à toute cette affaire si, tant à l'époque que maintenant, je n'avais plus été capable de me voir dans le miroir le matin sans penser que ce que je faisais n'était pas bon, et ni une bonne affaire pour le Canada»⁴²⁷.

Nous sommes tout à fait d'accord avec ces propos. Il ne fait aucun doute, à la lumière des faits portés à notre connaissance, que les négociateurs des accords de l'aéroport Pearson se trouvaient devant une tâche extrêmement difficile, compte tenu de la complexité de la transaction et des autres facteurs exposés précédemment. Ils ont accompli un travail remarquable en veillant à ce que les objectifs initiaux du gouvernement soient atteints et en obtenant ce qui aurait pu être un avantage durable pour les contribuables canadiens.

En tant que parlementaires chargés d'examiner l'entente du point de vue de l'intérêt public, nous reconnaissons la crédibilité des avis qui ont été donnés au gouvernement, nous constatons l'absence de faits permettant d'étayer solidement une opinion contraire, et nous reconnaissons également que les parlementaires n'ont pas les compétences voulues pour reprendre eux-mêmes les négociations, après coup.

M. Spencer, premier vice-président aux finances chez Claridge Properties Ltd. et administrateur de la Pearson Development Corporation, se trouvait de l'autre côté de la table lors des négociations qui ont abouti à la signature de l'entente. À propos des négociations, il a été très direct : «Elles ont été lentes, mais très ardues. Très, très ardues»⁴²⁸.

Et très efficaces, ajouterons-nous. Elles ont permis de conclure une entente qui aurait donné au public voyageur de cet aéroport et à la population canadienne un exemple durable de ce que peuvent accomplir l'État et le secteur privé quand ils s'associent dans l'intérêt du public.

⁴²⁷ Voir *délibérations*, 9:83.

⁴²⁸ Voir *délibérations*, 17:79.

«Je n'ai pas pris de notes ...»

Robert Nixon

Après la victoire des Libéraux aux élections du 25 octobre 1993, le premier ministre désigné Jean Chrétien s'est empressé d'essayer de remplir une de ses promesses électorales, qui consistait à revoir les accords relatifs à l'aéroport Pearson et le processus ayant mené à leur conclusion. Le 27 octobre, on téléphonait à M. Robert Nixon, bien connu pour sa contribution aux affaires publiques en Ontario, où il avait occupé plusieurs fonctions, notamment le poste de chef du Parti libéral de l'Ontario entre 1967 et 1975 et divers portefeuilles, y compris celui de trésorier de l'Ontario au sein du gouvernement Peterson, jusqu'à la défaite de ce gouvernement en 1990⁴²⁹.

Ce qu'on a demandé à M. Nixon était essentiellement de revoir l'accord et de faire part de ses vues personnelles au Premier ministre, dans un délai d'un mois. M. Nixon a eu l'impression que le premier ministre l'avait choisi pour cette tâche principalement parce qu'il avait confiance en lui. Au début, il a fait valoir qu'il n'était pas avocat, mais, par la suite, il s'est senti honoré qu'on lui ait demandé de jouer ce qu'il considérait comme un rôle important au tout début du mandat du nouveau gouvernement⁴³⁰.

M. Nixon a précisé à plusieurs reprises que son rôle se résumait à exprimer son avis personnel et qu'il n'a pas tenté d'obtenir les pouvoirs d'une commission d'enquête, qui lui auraient permis de recevoir des témoignages sous serment, de sommer des témoins à comparaître et de tenir des audiences publiques⁴³¹.

En outre, il n'a toutefois pas reçu de mandat écrit délimitant son étude. Après avoir accepté sa mission, M. Nixon a embauché M. Stephen Goudge, associé de la firme Gowling, Strathy and Henderson, et M. Allan Crosbie, directeur général de la banque d'affaires spécialisée Crosbie and Co. Outre les avis juridiques et financiers indépendants que lui ont

⁴²⁹ Voir *Délibérations*, 5:17.

⁴³⁰ Voir *Délibérations*, 25:21-22.

⁴³¹ Voir *Délibérations*, 25:25.

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fournis ces deux personnes, M. Nixon a pu compter sur le soutien administratif de M. Brad Wilson, qui avait déjà fait partie de son état-major⁴³².

Le 29 octobre 1993, au cours d'une séance de planification préliminaire à laquelle participaient MM. Goudge et Wilson, M. Nixon a bien précisé qu'il s'en tiendrait au délai imparti, et l'équipe a établi le calendrier des travaux, réservant environ trois semaines pour des rencontres et l'examen des documents obtenus et consacrant la quatrième à la rédaction du rapport. L'équipe a alors reconnu que, pour respecter le délai d'un mois, il lui fallait «limiter le nombre de réunions» avec les particuliers et les organisations⁴³³.

Les réunions que M. Nixon a tenues semblent avoir eu lieu le plus souvent à la demande même des personnes concernées qui étaient au courant de sa nomination et de la nature du mandat qui lui avait été confié⁴³⁴. Bien qu'on nous ait affirmé avoir tenté de concilier les demandes des intéressés avec les besoins de renseignements de M. Nixon, ni le rapport de M. Nixon ni sa déclaration ne nous éclairent sur la façon dont les personnes interrogées ont été choisies.

Parmi les personnes que M. Nixon a rencontrées, 18 ont également comparu devant notre comité. La description que M. Nixon a donnée des renseignements recueillis auprès de celles-là (protégés, dans certains cas, par l'obligation de confidentialité) peut donc être comparée aux renseignements et avis qui nous ont été communiqués directement. Ces personnes ont affirmé sous serment durant les audiences publiques que les renseignements qu'elles avaient fournis à M. Nixon ne contredisaient pas ce qu'elles avaient dit au Comité.

M. Nixon a admis que les réunions et autres entretiens avaient été de courte durée, même lorsqu'il avait discuté avec des intervenants clés qui auraient pu lui fournir des renseignements techniques détaillés. De plus, les rencontres n'avaient aucun caractère officiel et bien souvent les observations des participants n'ont pas été consignées par écrit⁴³⁵. Par exemple, la conversation téléphonique avec M. Farquhar n'a duré que 15 minutes et n'a porté que sur des renseignements courants, y compris la possibilité de nommer des agents provinciaux et fédéraux aux conseils des administrations aéroportuaires locales⁴³⁶. En tant que directeur général des transferts des aéroports, M. Farquhar aurait pu fournir (comme il l'a fait au cours de nos audiences) des détails sur la politique concernant les administrations

⁴³² Voir *Délibérations*, 25:17.

⁴³³ Voir *Délibérations*, 25:5.

⁴³⁴ Voir *Délibérations*, 25:6.

⁴³⁵ Voir *Délibérations*, 25:57.

⁴³⁶ Voir *Délibérations*, 25:49.

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aéroportuaires locales et les démarches de l'administration aéroportuaire du Grand Toronto pour se faire reconnaître. De même, la rencontre entre la mairesse McCallion et M. Nixon a duré une trentaine de minutes seulement, et l'entretien avec les représentants d'Air Canada et avec M. Coughlin, à peine une heure⁴³⁷.

Une fois l'étape de collecte et d'analyse des renseignements amorcée, M. Nixon a dressé la liste des principaux aspects de la transaction qui le préoccupaient et a rédigé la première version de certains documents, comme la lettre devant accompagner le rapport⁴³⁸. En fait, quelques deux semaines avant la publication du rapport final, soit bien avant d'avoir terminé ses rencontres avec des participants choisis et d'avoir reçu l'examen financier de M. Crosbie, M. Nixon avait préparé des ébauches préliminaires détaillées de son rapport, comportant sensiblement les mêmes conclusions que celles qu'a obtenues le Premier ministre. On peut donc dire que M. Nixon ne s'est pas seulement hâté de juger l'affaire, il s'est même hâté de la préjuger.

M. Nixon nous a dit que, s'il avait des réserves sur certains aspects du contenu de l'accord, le plus important à ses yeux était que les accords avaient été signés au beau milieu d'une campagne électorale, alors que la question suscitait la controverse : «À mon avis, c'était tout à fait contraire à ce qui se fait normalement dans un régime démocratique⁴³⁹.»

M. Nixon nous a de plus affirmé que, d'après les renseignements qu'il avait recueillis, y compris les avis juridiques de M. Goudge et les conseils financiers de M. Crosbie, et sa propre expérience, il avait conclu qu'il devait conseiller au Premier ministre d'annuler les accords⁴⁴⁰. Le 24 novembre 1993, M. Nixon a rencontré M. Eddie Goldenberg, le conseiller politique du Premier ministre, et l'a informé de ses conclusions. Les conclusions ont été lues, nous a-t-on dit, sans qu'aucun commentaire ne soit formulé, et des arrangements ont été pris en vue de la présentation du rapport.

Le rapport, qui renfermait les conclusions et la recommandation de M. Nixon, a été présenté le 29 novembre 1993, au cours d'une réunion à laquelle assistaient M. Nixon, accompagné de M. Wilson, le premier ministre Jean Chrétien, M. Goldenberg et le ministre des Transports Douglas Young. Par la suite, M. Nixon a appris que son rapport serait rendu

⁴³⁷ Voir *Délibérations*, 17:14-15 et 12:30.

⁴³⁸ Voir *Délibérations*, 25:10.

⁴³⁹ Voir *Délibérations*, 25:10.

⁴⁴⁰ Voir *Délibérations*, 25:14.

public le 3 décembre à l'occasion d'une conférence de presse où la décision de l'annulation serait annoncée⁴⁴¹.

Le 3 décembre 1993, le Premier ministre a annoncé que les accords de l'aéroport Pearson seraient annulés et que des pourparlers devant mener à un règlement seraient immédiatement amorcés avec les représentants de Pearson Development Corporation. Les avis formulés dans le rapport Nixon ont été présentés comme les principaux motifs de cette décision, et la recommandation du rapport a été citée dans le communiqué annonçant l'annulation des accords :

Mon examen m'amène à une seule conclusion. Valider un contrat inadéquat comme celui-là, conclu de façon si irrégulière et peut-être après manipulation politique, serait inacceptable. Je vous recommande donc de l'annuler.

1. Observations

La décision d'annuler les accords de l'aéroport Pearson a été annoncée quelques jours à peine après que M. Nixon eut fait sa recommandation, et son rapport était à la fois annexé au communiqué annonçant l'annulation et cité dans le communiqué. Le gouvernement n'a donné aucune explication de sa décision d'annuler le contrat.

Notre examen de cette décision s'appuie donc fortement sur l'évaluation des conclusions précises contenues dans le rapport Nixon ainsi que des faits et des analyses sur lesquels se fondent ces conclusions. Pour effectuer notre évaluation, nous avons aussi tenu compte du rapport et des renseignements que nous ont fournis MM. Nixon, Goudge et Wilson au cours des audiences des 26, 27 et 28 septembre et du 6 novembre 1995. Nous avons aussi pris en considération les témoignages de 62 autres personnes interrogées lors d'audiences tenues en juillet, août, septembre et une partie d'octobre 1995.

A) Le processus

Nous avons analysé le processus suivi par M. Nixon pour en arriver à ses conclusions au moyen des mêmes critères que nous avons appliqués, à divers stades, au processus ayant mené à la ratification des accords de l'aéroport Pearson. Selon ces critères, les participants doivent essentiellement déclarer sous serment qu'ils n'ont pas fait l'objet de pressions politiques indues, qu'ils n'ont pas été manipulés par des lobbyistes ou d'autres intervenants et qu'ils n'ont pas été appelés à respecter des délais ou autres conditions qui les auraient empêchés de s'acquitter de leurs fonctions de façon professionnelle.

⁴⁴¹ Voir *Délibérations*, 25:14.

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M. Nixon nous a assurés que les conclusions qui figurent dans son rapport sont uniquement les siennes et que son examen n'a pas fait l'objet de pressions ou d'interventions politiques. Il a ajouté qu'il était convaincu que la recommandation qu'il a faite au Premier ministre était la bonne⁴⁴².

Comme nous l'avons déjà vu, M. Nixon a reconnu que le délai d'un mois l'avait empêché de rencontrer tous ceux avec qui il aurait aimé discuter. La confiance qu'il a dans ses résultats nous porte à conclure que le court délai ou d'autres circonstances n'ont pas, d'après lui, nui à l'examen des accords de l'aéroport Pearson.

Nous ne mettons pas en doute la sincérité de l'attachement de M. Nixon à l'intérêt public tel qu'il l'interprète. Notre propre enquête nous a toutefois amenés à nous interroger sur son discernement lorsqu'il donne créance à sa propre démarche et à ses résultats.

Comme l'ont montré les premiers chapitres du présent rapport, le processus appliqué dans l'affaire Pearson et les décisions qui sont traduites dans les accords finaux étaient extrêmement compliqués. Ayant tenu des audiences exhaustives à ce sujet pendant plus de trois mois, nous ne croyons pas que seulement trois semaines de collecte et d'analyse de données ont pu suffire à M. Nixon pour exécuter adéquatement son mandat, ou même lui paraître suffisantes. Le rapport de M. Crosbie à M. Nixon, son analyse financière dans laquelle il fait mention du «délai très court qui [lui] était imparti» et signale que son examen était «de nature forcément restreinte» (rapport Crosbie, p. 1), ne fait rien pour dissiper nos inquiétudes à cet égard.

Nos préoccupations s'aggravent au vu du nombre de personnes qu'il n'a pas rencontré.

M. Nixon **n'a pas rencontré** ni contacté M. Victor Barbeau qui, à titre de sous-ministre adjoint des Aéroports, au ministère des Transports, était l'un des grands responsables du cadre stratégique régissant le processus Pearson, de l'élaboration et de la diffusion de la Demande de propositions et du processus d'évaluation⁴⁴³.

M. Nixon **n'a pas rencontré** ni contacté M. Gerald Berigan, directeur général au ministère des Transports chargé de créer une équipe et d'établir le processus d'évaluation en vue de l'examen des propositions en 1992⁴⁴⁴.

⁴⁴² Voir *Délibérations*, 25:15.

⁴⁴³ Voir *Délibérations*, 25:33.

⁴⁴⁴ Voir *Délibérations*, 25:35.

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M. Nixon **n'a pas rencontré** ni contacté M. Bob Lane qui a mis sur pied l'équipe d'évaluation et dirigé le processus d'évaluation⁴⁴⁵.

M. Nixon **n'a pas rencontré** ni contacté MM. Cappe et Gershberg, ni aucun autre agent du Secrétariat du Conseil du Trésor qui aurait pu lui expliquer le rôle du Secrétariat dans ce processus⁴⁴⁶.

M. Nixon **n'a pas rencontré** ni contacté M. Robert L'Abbé, de la firme Raymond, Chabot, Martin, Paré, qui aurait pu lui expliquer les résultats obtenus au cours de la vérification du processus d'évaluation⁴⁴⁷.

M. Nixon **n'a pas rencontré** ni contacté M. Simke, de la firme Price Waterhouse, qui aurait pu lui fournir des précisions sur certaines questions, comme la durée de la période de préparation des propositions⁴⁴⁸.

M. Nixon **n'a pas rencontré** M. Raymond Hession, de Paxport, qui aurait pu lui décrire en détail la proposition de Paxport, la situation devant laquelle se trouvait cette société et son recours aux services de lobbyistes⁴⁴⁹.

M. Nixon **n'a rencontré aucun** des lobbyistes dont le rôle fait l'objet de conclusions très précises dans son rapport⁴⁵⁰.

M. Nixon **n'a pas rencontré** M. Shortliffe, qui fut sous-ministre des Transports pendant l'élaboration d'une bonne partie du cadre stratégique régissant les décisions prises au sujet de l'aérogare, puis greffier du Conseil privé pendant les négociations et la conclusion des accords⁴⁵¹.

M. Nixon **n'a pas rencontré** ni contacté les ministres Douglas Young et Jean Corbeil qui auraient pu lui expliquer pourquoi ils ont décidé de faire appel au secteur privé pour réaménager les aérogares et lui fournir les motifs des décisions qu'ils ont prises concernant

⁴⁴⁵ Voir *Délibérations*, 25:36.

⁴⁴⁶ Voir *Délibérations*, 25:41.

⁴⁴⁷ Voir *Délibérations*, 25:41.

⁴⁴⁸ Voir *Délibérations*, 25:43.

⁴⁴⁹ Voir *Délibérations*, 25:44.

⁴⁵⁰ Voir *Délibérations*, 25:44.

⁴⁵¹ Voir *Délibérations*, 25:45-46.

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le processus à suivre⁴⁵². Il a donc choisi de s'en remettre à sa propre conception des politiques du gouvernement progressiste conservateur et de leurs fondements, au lieu de s'appuyer sur des renseignements que les ministres concernés auraient pu lui fournir.

La liste intégrale des gens qui nous ont fourni des renseignements et des conseils utiles, mais que M. Nixon n'a pas rencontrés, ne s'arrête pas là et comprend des universitaires aptes à fournir des avis sur le point le plus important aux yeux de M. Nixon, soit la conclusion de ces accords en pleine campagne électorale⁴⁵³.

Nos préoccupations quant au délai d'un mois imparti à M. Nixon vont bien au-delà du nombre de personnes qu'il a pu rencontrer. Les explications que M. Nixon nous a fournies pour justifier l'omission de certains témoins nous ont nettement laissé l'impression qu'il ne saisissait vraiment ni la nature du processus Pearson ni le rôle particulier de certains intervenants.

Ainsi, M. Nixon nous a dit qu'il ne connaissait ni l'identité ni le rôle de M. Ron Lane, qui a dirigé le processus d'évaluation. Il n'avait pas estimé nécessaire de communiquer avec lui ou de le rencontrer parce qu'il disposait de l'évaluation indépendante effectuée par M. Crosbie. Cependant, le processus d'évaluation du Ministère correspondait à une évaluation exhaustive des propositions, y compris d'une série de plans de réaménagement, du transfert des employés, des retombées industrielles et d'autres considérations. Il ne s'agissait pas d'une simple analyse financière, que le rapport Crosbie aurait pu effectivement remplacer.

De même, M. Nixon a affirmé qu'il n'avait pas rencontré M. Robert L'Abbé parce qu'il disposait de l'évaluation Crosbie, qui portait également sur la valeur des contrats. Toutefois, le rôle de la firme Raymond, Chabot, Martin, Paré ne consistait pas à évaluer les contrats. M. L'Abbé et son équipe ont surveillé le processus d'évaluation officielle du Ministère et ont confirmé son intégrité dans le cadre d'une évaluation effectuée après coup.

Ces erreurs et omissions soulèvent une question fondamentale : si M. Nixon ne comprenait pas des éléments fondamentaux du processus comme l'évaluation des propositions et la vérification de l'évaluation, comment aurait-il pu déterminer qui il devait rencontrer et quelles questions poser durant des entretiens qui ont été décrits par les personnes contactées comme étant relativement brefs et informels? Les discussions que nous avons eues avec M. Nixon, et avec MM. Goudge et Crosbie en septembre et novembre ne nous ont pas éclairés là-dessus.

⁴⁵² Voir *Délibérations*, 25:38.

⁴⁵³ Voir *Délibérations*, 25:44-45.

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Nos préoccupations en ce qui concerne le délai d'un mois vont encore plus loin. L'équipe Nixon aurait eu beaucoup de mal à ne pas se laisser indûment influencer par certaines des personnes rencontrées, étant donné l'absence de renseignements provenant de sources qui auraient pu offrir une perspective différente à M. Nixon et ses conseillers.

M. Nixon a trouvé le temps de tenir au moins cinq réunions avec diverses personnes qui tentaient de créer une administration aéroportuaire locale de Toronto ainsi que des agents du gouvernement ontarien qui avaient, à un moment donné, appuyé l'une des administrations candidates. Nous estimons qu'il a rencontré au total 12 personnes des administrations municipales, régionales et provinciales concernées pour les fins de son examen. Selon M. Nixon, ces rencontres lui ont donné l'impression que tant le processus d'adjudication que les contrats eux-mêmes comportaient des lacunes, que le ministre Corbeil avait refusé de participer à des pourparlers qui auraient pu mener à la reconnaissance d'une administration aéroportuaire locale et que les fonctionnaires en étaient restés mécontents⁴⁵⁴. M. Nixon semble par contre n'avoir jamais tenté de vérifier ou de concilier ces impressions. Il n'a ni communiqué avec le ministre, ni examiné en détail la question de la reconnaissance d'une administration aéroportuaire locale.

M. Nixon a aussi rencontré des membres du caucus du Parti libéral de la région métropolitaine de Toronto, des députés comme des sénateurs. On nous a dit que le seul sujet à l'ordre du jour était le réaménagement des aéroports 1 et 2. Il importe en outre de signaler que certains participants à cette rencontre ont exprimé une vive opposition aux accords dans des déclarations diffusées dans les médias durant l'examen mené par M. Nixon. Mais l'intérêt de M. Nixon pour l'opinion des milieux politiques n'a pas débordé le cadre de son propre parti.

M. Nixon a omis de communiquer avec de nombreux hauts fonctionnaires qui avaient exercé d'importantes responsabilités liées à divers aspects du processus, mais il a néanmoins trouvé le temps de rencontrer M. Chern Heed, qui était administrateur de l'aéroport Pearson de 1990 à 1993. M. Heed semble être le seul fonctionnaire fédéral à avoir critiqué ouvertement le projet de réaménagement de l'aéroport Pearson, quoique le compte rendu que M. Nixon fait de son point de vue ne contienne aucune allégation concrète vérifiable d'irrégularités ou de décisions peu judicieuses⁴⁵⁵.

Des problèmes d'ordre logistique nous ont empêchés d'interroger M. Heed, mais nous croyons que lorsque M. Nixon dit de M. Heed qu'il n'était pas heureux de ce qu'il percevait comme des pressions et du tour que prenaient les négociations, il faut se dire que, en tant

⁴⁵⁴ Voir *Délibérations*, 25:8-9.

⁴⁵⁵ Voir *Délibérations*, 25:8-9.

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qu'administrateur de l'aéroport, il est incontestable que M. Heed se soit investi personnellement dans l'aéroport et qu'il ait éprouvé beaucoup de réticence à l'idée de passer la main. D'ailleurs, le ministre Lewis a dit que c'était peut-être à cause de sentiments de cet ordre que certains fonctionnaires avaient fait traîner les choses en longueur, ayant du mal à renoncer à leurs fonctions de gestion. Quelques réserves que M. Heed ait pu éprouver, elles ne l'ont pas empêché de signer avec le reste de l'équipe le rapport d'évaluation recommandant le choix de la proposition de Paxport. Tout bien considéré, on ne rejette pas un projet de l'envergure du plan de réaménagement de l'aéroport Pearson parce qu'un fonctionnaire a des états d'âme.

M. Nixon semble avoir accordé une grande importance aux vues exprimées dans ses rencontres avec les partisans d'une administration aéroportuaire locale aux niveaux municipal, régional et provincial. De plus, comme s'il avait voulu souligner l'importance accordée dans son examen à toute personne ayant des accusations à formuler, M. Nixon est allé jusqu'à mettre au programme de son examen une rencontre avec le caucus du parti politique qui venait de passer toute une campagne électorale à entretenir les doutes du public au sujet du projet.

2. Les constatations de M. Nixon

Le rapport Nixon compte à peine 14 pages, mais il renferme un nombre impressionnant d'erreurs de fait, de faiblesses d'argumentation et de jugements douteux. Aux fins de notre examen, nous nous en tenons aux éléments clés qui, selon M. Nixon, ont directement motivé ses conclusions et nous les présentons sous les trois rubriques dont M. Nixon s'est servi pour décrire leur importance.

A) Questions de moindre importance

On avait tant fait de bruit autour des allégations de manipulation par des intérêts politiques et d'excès de lobbying quand on a annoncé que les accords Pearson seraient résiliés que nous avons été un peu étonnés de constater que M. Nixon avait relégué ces deux questions dans la catégorie de sujets de moindre importance. En fait, ce sont même les seules questions placées dans cette catégorie.

i) Favoritisme

M. Nixon affirme dans son rapport — ce qu'il a répété devant nous — que M. Donald Matthews de Paxport a été président de la campagne d'investiture du très honorable Brian Mulroney en 1983, président du Parti progressiste conservateur et principal responsable du financement de ce parti. Il prétend également que M. Otto Jelinek, ancien ministre dans les deux gouvernements Mulroney, a été employé par une filiale de Paxport

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après avoir décidé de ne pas se représenter aux élections de 1993. M. Nixon dit que ces circonstances l'ont amené à soupçonner que le favoritisme a pu jouer un rôle dans le choix, en 1992, de la proposition de Paxport comme étant la meilleure proposition globale.

L'ambiguïté insidieuse avec laquelle cette opinion est exprimée nous laisserait croire qu'il ne s'agit pas simplement d'une opinion, mais bien d'une insinuation. Voici les mots exacts employés dans le rapport Nixon, et répétés presque mot pour mot durant nos audiences : « Ces faits (ces affiliations au Parti progressiste conservateur), combinés au processus boiteux décrit plus haut, amènent naturellement à soupçonner que le favoritisme n'est pas étranger au choix de Paxport Inc.»⁴⁵⁶.

Les faits présentés par M. Nixon contiennent plusieurs erreurs ou omissions, M. Nixon s'étant tout bonnement fondé, comme il l'a avoué à notre grand étonnement, sur des déclarations rapportées dans la presse populaire⁴⁵⁷. Il est vrai que M. Don Matthews a été président du Parti progressiste conservateur du Canada, mais c'était il y a plus de vingt ans. Il n'a pas été président de la campagne d'investiture de M. Mulroney et n'a jamais été le responsable du financement du Parti progressiste conservateur. De plus, selon les témoignages recueillis sous serment, M. Jelinek n'a jamais été directeur d'une filiale de Paxport et n'a jamais été appelé à donner son avis au sujet de l'aéroport Pearson⁴⁵⁸.

M. Matthews est évidemment affilié depuis longtemps au Parti progressiste conservateur du Canada. La question fondamentale est de savoir si cela a été un facteur déterminant dans le traitement préférentiel accordé à la proposition de Paxport. M. Nixon ne fait pas cette très grave allégation de façon explicite dans son rapport, mais elle est sous-entendue. S'il n'y a pas eu de traitement préférentiel, M. Nixon n'a pas de raison de conclure que le favoritisme a joué dans le choix de la proposition de Paxport.

Rien dans ce qu'a dit M. Nixon n'appuie l'insinuation de traitement préférentiel. Il s'agit de simples suppositions de sa part. Au cours des longues discussions que nous avons eues avec M. Nixon et ses collègues durant nos audiences, ces derniers ont été incapables d'appuyer leurs opinions sur des faits concrets, qu'il s'agisse de la période avant ou durant le processus de sélection de la meilleure proposition globale.

Pour appuyer ses dires, M. Nixon invoque d'abord les propos de quelqu'un qui serait affilié au groupe Morrison Hershfield et qui aurait affirmé que les dés étaient pipés dès mars 1992, lorsque la demande de propositions a paru. L'importance que l'équipe Nixon accordait

⁴⁵⁶ Rapport, p. 9; *Délibérations*, 25:13.

⁴⁵⁷ Voir *Délibérations*, 30:32.

⁴⁵⁸ Voir *Délibérations*, 18:41.

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à l'opinion de Morrison Hershfield est confirmée par M. Goudge, qui a affirmé qu'il considère l'opinion de Morrison Hershfield comme corroborant la conclusion que l'ombre de manipulations politiques pesait sur cette transaction⁴⁵⁹.

Il n'a cependant pu produire aucune note confirmant sa rencontre avec Morrison Hershfield ni les commentaires de ces derniers.

Or, comme on l'a vu au chapitre IV, le groupe Morrison Hershfield avait pourtant fourni à l'équipe Nixon une explication des raisons pour lesquelles il n'avait finalement pas soumis de proposition, et qui n'avait rien à voir avec le favoritisme. Il avait admis que le gouvernement avait opté pour une formule différente de celle sur laquelle sa propre proposition était fondée, et que celle-ci ne répondait donc pas aux exigences énoncées dans la demande de propositions. Ce qui s'était en fait produit, c'est que le gouvernement avait choisi une formule comportant la cession des aéroports, qui aurait conféré au promoteur un rôle que Morrison Hershfield n'était pas disposé à assumer⁴⁶⁰.

Lorsque nous l'avons interrogé, M. Nixon a admis lui aussi que la proposition de Morrison Hershfield ne satisfaisait aux critères de la demande de propositions⁴⁶¹. Il a prétendu que Morrison Hershfield avaient renoncé à modifier leurs proposition parce que les règles du jeu ne leurs paraissaient pas équitables, mais M. Nixon a cependant admis que le document que la firme lui avait remis ne contenait aucune indication en ce sens, et il a été incapable de produire des preuves de ses allégations.

Pour étayer la thèse du favoritisme, M. Nixon ne s'appuie sur rien d'autre que de vagues expressions de mécontentement émanant de fonctionnaires du gouvernement de l'Ontario qui avaient tenté de promouvoir l'établissement d'une administration aéroportuaire locale. On note une fois encore l'absence totale de preuves concrètes.

L'équipe Nixon n'a manifestement pas cherché à vérifier si les soupçons dont plusieurs personnes ont fait état durant la période d'examen étaient fondés. Elle a tout simplement accepté sans les contester les allégations formulées au sujet des accords Pearson. On nous a dit que, comme l'enquête Nixon n'était pas une procédure judiciaire, les déclarations n'étaient pas rejetées parce qu'il s'agissait de preuves par ouï-dire, mais qu'elles étaient plutôt acceptées comme étant des informations⁴⁶². Toutefois, comme les conclusions

⁴⁵⁹ Voir *Délibérations*, 25:93

⁴⁶⁰ Voir *Délibérations*, 30:32.

⁴⁶¹ Voir *Délibérations*, 30:62.

⁴⁶² Voir *Délibérations*, 25:89.

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de M. Nixon le démontrent, ces informations n'ont pas été vérifiées, mais simplement transformées en une opinion basée sur des faits.

Le manque de sérieux du rapport Nixon se manifeste aussi par l'absence de règles claires quant à l'interprétation des faits. Apparemment, l'affiliation de M. Matthews au Parti progressiste conservateur a été interprétée comme étant, à elle seule, un motif suffisant pour permettre à l'équipe Nixon de considérer comme des preuves de favoritisme toutes les prétendues failles du processus qui a mené au choix de la proposition de Paxport. Pourtant, l'application de cette même règle rendrait la décision d'annuler les accords de l'aéroport Pearson tout aussi contestable, car M. Nixon a été longtemps affilié au Parti libéral de l'Ontario, y compris comme chef.

Nos discussions, tenues sous serment, avec les fonctionnaires et ministres qui ont joué un rôle important dans le choix de la proposition de Paxport n'ont fourni aucune indication permettant de croire que cette proposition aurait bénéficié d'un traitement préférentiel, en raison de l'affiliation politique de M. Matthews ou pour toute autre raison. Au contraire, les décideurs clés ont toujours garanti l'intégrité du processus, ce qui est confirmé par certains faits, notamment que le gouvernement n'ait pas accordé le contrat à Paxport immédiatement, après qu'il eut été déterminé que le projet soumis par celle-ci constituait la meilleure proposition globale.

Nous arrivons à la conclusion que l'insinuation de traitement préférentiel contenue dans le rapport Nixon est non seulement non fondée, elle est aussi scandaleuse.

ii) Le rôle des lobbyistes

M. Nixon conclut ce qui suit du rôle des lobbyistes : «Les lobbyistes, cela ne laisse aucun doute, ont joué un rôle déterminant en vue d'infléchir les décisions prises à ce moment-là, débordant largement le principe acceptable de la «consultation».» Il pense plus particulièrement aux doléances des hauts fonctionnaires qui ont participé aux négociations : forte influence des lobbyistes sur leurs actes et leurs décisions; intérêt très marqué de la part du personnel politique; pressions qui ont entraîné la réaffectation de plusieurs responsables⁴⁶³.

Comme ce fut le cas à d'autres moments de nos audiences, l'équipe Nixon n'a pas étayé ses conclusions. Elle ne nous a pas non plus précisé la norme correspondant au «principe acceptable de la consultation», de sorte que la base des conclusions de M. Nixon

⁴⁶³ Voir *Délibérations*, 25:13.

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quant au rôle des lobbyistes continue de baigner dans le mystère le plus complet. De la même façon, nos discussions n'ont permis de dégager aucune indication précise sur les limites permises, auxquelles M. Nixon fait allusion, qui pourraient s'appliquer aux démarches des lobbyistes pour influencer les fonctionnaires.

La législation fédérale établit certains critères. La *Loi sur l'enregistrement des lobbyistes* reconnaît le lobbying comme un élément légitime du processus démocratique et exige que toute personne qui s'engage à «communiquer avec un titulaire d'une charge publique afin de tenter d'influencer» certains types de décisions gouvernementales fournisse les renseignements prescrits à la Direction de l'enregistrement des lobbyistes d'Industrie Canada. Le critère qui ressort de cette loi est qu'il est acceptable de tenter d'influencer le titulaire d'une charge publique pourvu que les renseignements prescrits soient rendus publics. Les formes d'influence qui ne sont pas acceptables, comme la corruption, sont énoncées dans le *Code criminel*.

M. Nixon ne dit pas si son critère quant au «principe acceptable de la consultation» correspond à ceux approuvés par le Parlement. D'après ses remarques sur le lobbying, il ne semble pas croire qu'il y a eu infraction au *Code criminel* ou à la loi fédérale sur l'enregistrement des lobbyistes, autrement il aurait été tenu d'en informer la Gendarmerie royale du Canada au lieu de se servir de cette information pour faire de vagues insinuations. Par ailleurs, M. Nixon n'a donné aucun exemple précis de la nature de ses critères ou du comportement qu'il considère comme inacceptable.

Nous avons interrogé de près les fonctionnaires sur la façon dont ils perçoivent l'influence exercée par les lobbys, et nous avons constaté d'après leurs réponses, faites sous serment, la même tendance : ils en font très peu de cas. Les lobbyistes et leurs employeurs n'ont pas non plus réussi à montrer que leur action avait eu des répercussions tangibles sur les décisions. À vrai dire, dans le compte rendu qu'ils font de leurs activités relativement aux aéroports 1 et 2, ils parlent beaucoup plus du volet de leur travail consistant à fournir à leurs clients des renseignements à jour sur le processus établi par le gouvernement et sur les initiatives de leurs concurrents, de même que des conseils stratégiques et des services de communication, que sur leur rôle de démarcheurs auprès des hauts fonctionnaires.

L'information que nous avons réunie ne contient absolument rien qui permettrait de conclure que le travail des lobbyistes a amené des responsables à prendre des décisions contraires à l'intérêt public.

En revanche, il est bien établi que le dossier des accords Pearson occupait de nombreux lobbyistes. Nous avons fait état des honoraires mensuels de plusieurs lobbyistes importants au chapitre III. D'après les témoignages que nous avons reçus et les renseignements qui ont été fournis à d'autres comités parlementaires, Paxport aurait dépensé

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à ce titre 334 268 \$ entre le 1^{er} février 1990, lorsqu'elle a embauché des lobbyistes pour le dossier des aérogares 1 et 2, et février 1994. Claridge aurait dépensé une somme comparable entre la date de parution de la demande de propositions et le 13 janvier 1993 (date de la formation de la coentreprise). Si ses dépenses globales ont été de l'ordre de celles de Paxport, elles pourraient avoir dépassé 700 000 \$.

Les principaux promoteurs concernés dans le dossier des aérogares 1 et 2 ont dépensé environ un million de dollars sur une période d'environ quatre ans en frais de lobbying - nettement moins que les «millions de dollars» clamés par le ministre des Transports lors de sa comparution devant le Comité sénatorial des affaires juridiques et constitutionnelles, en juillet 1994⁴⁶⁴. Compte tenu du fait qu'il y avait à la chef un contrat de 750 millions de dollars et qu'il s'agissait d'un dossier d'une grande complexité exigeant des services de relations avec le gouvernement, des dépenses de lobbying globales d'un quart de million de dollars par an ne nous semblent pas excessives. Au demeurant, les promoteurs, comme les lobbyistes, nous ont assurés que les sommes qui ont été versées pour des services de relations avec le gouvernement en rapport (directement ou non) avec l'aéroport Pearson sont typiques de celles qu'exigent des projets d'une telle envergure.

À notre avis, les honoraires versés aux lobbyistes pour le projet de réaménagement des aérogares de l'aéroport Pearson n'ont rien de singulier par comparaison avec d'autres projets réalisés sous le gouvernement précédent ou actuellement en cours. En particulier, le niveau d'activité des lobbyistes ne présente rien d'indu qui fasse douter de l'intégrité du processus ou des affirmations en ce sens des personnes concernées.

Il serait possible de défendre les allégations faites dans le rapport Nixon si l'on pouvait montrer que, même si aucun lobbyiste n'a commis une infraction ou enfreint une norme, l'impact de l'ensemble des lobbyistes était d'une façon ou d'une autre excessif ou inopportun. Toutefois, cet argument n'est pas plus convaincant que ceux de M. Nixon. Les lobbyistes agissaient au nom d'entreprises qui se livraient une concurrence féroce. Leur impact n'était pas cumulatif. En réalité, la présence de plusieurs groupes de pression défendant des intérêts concurrentiels aurait plutôt eu pour effet de réduire l'impact global sur le processus Pearson.

Notre enquête indique également que la pression qu'ont pu ressentir les personnes engagées dans le processus était tout à fait normale. Tout projet doit comporter une échéance pour produire des résultats. Régulièrement, les personnes qui y travaillent peuvent sentir de la pression. Cela ne signifie pas pour autant que leur travail n'est plus à la hauteur ou qu'il a été dénaturé par des forces sinistres.

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Voir *Délibérations*, 11:53.

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Enfin, notre enquête nous a permis de trouver des explications tout à fait normales à la réaffectation de certains fonctionnaires ayant participé au processus Pearson. À l'exception du cas de M. Chern Heed, ces départ n'avaient rien à voir avec les opinions de ces gens au sujet du processus. Et même dans le cas de M. Heed, il est difficile de savoir jusqu'à quel point le mécontentement peut avoir joué un rôle dans son départ puisqu'il est parti occuper un poste important à l'aéroport international de Hongkong, dont on peut supposer qu'il constituait une raison positive de quitter Transports Canada. Comme nous l'avons vu cependant, ses anciens collègues de Transports Canada sont tous d'accord pour dire qu'il avait fait tout ce qu'il pouvait pour faire progresser le dossier Pearson et qu'il était parti de son plein gré, son départ tenant simplement à l'idée que d'autres personnes se faisaient de son opinion. À partir de cela, on peut difficilement insinuer, comme le fait le rapport Nixon, que les pressions entourant ce dossier sont à l'origine de plusieurs réaffectations.

L'opinion de M. Nixon quant au rôle des lobbyistes ne nous convainc pas. En fait, les observations que contient son rapport au sujet de l'impact des groupes de pression sont si vagues qu'elles nous inspirent essentiellement un sentiment de gêne pour son auteur.

iii) Questions diverses

a) L'identité des parties

Parmi les questions auxquelles M. Nixon a attaché une certaine importance dans son témoignage, plusieurs ne figurent dans aucune de ses trois catégories de priorités. Nous les traitons donc comme des questions de moindre importance.

M. Nixon soutient que les parties n'étant pas clairement identifiées dans les accords, cela a inévitablement éveillé la méfiance du public⁴⁶⁵.

La controverse qui a entouré les accords de l'aéroport Pearson en octobre 1993 touchait divers aspects de ces accords, mais nous ne nous souvenons pas que l'identité des parties ait été l'un des aspects controversés. Et M. Nixon n'a certainement pas réussi à prouver le contraire.

Par ailleurs, M. Goudge nous a affirmé, sur ce point, que l'identité des parties était indiquée dans le contrat, mais n'avait pas été rendue publique durant la campagne électorale⁴⁶⁶. Cette affirmation laisse supposer que l'objection ici n'a rien à voir avec les

⁴⁶⁵ Rapport, p. 11 et *Délibérations*, 25:13.

⁴⁶⁶ Voir *Délibérations*, 27:12.

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accords, mais bien avec le genre de renseignements fournis entre le début de la campagne électorale et le 7 octobre 1993, date à laquelle les accords ont été retirés des mains du tiers.

Nous ne sommes pas du tout convaincus du bien-fondé de cette objection. Fautive tant du point de vue des faits que du point de vue de la logique, elle laisserait entendre que la recommandation d'annulation des accords de l'aéroport Pearson faite à la fin de novembre peut se justifier par le fait que le gouvernement n'a pas fourni suffisamment de renseignements sur ces accords avant qu'ils ne soient conclus presque deux mois auparavant, auquel moment l'information a été fournie.

b) La création d'un précédent

M. Nixon soutient que les accords de l'aéroport Pearson auraient créé un précédent que les autres administrations aéroportuaires locales du Canada n'auraient pas manqué d'exploiter pour amener le gouvernement à leur accorder un traitement plus favorable.

Le rapport Nixon n'indique pas les conditions des accords de l'aéroport Pearson que les administrations aéroportuaires locales auraient pu voir comme des précédents. M. Nixon n'a pas non plus présenté d'argument concret pour appuyer cette affirmation lorsqu'il a témoigné devant notre comité.

Nous en concluons que M. Nixon n'a pas étudié la question suffisamment à fond pour bien saisir la nature des préoccupations qu'il a apparemment entendu exprimer quant au fait que les administrations aéroportuaires locales risquaient de considérer les accords relatifs aux aéroports 1 et 2 comme un précédent.

S'il s'était donné la peine de le faire, il y aurait trouvé une source potentielle d'insatisfaction des administrations aéroportuaires locales et aurait constaté qu'il y avait sous doute lieu pour le gouvernement d'expliquer clairement à celles-ci pourquoi les conditions qui leur étaient faites différaient de celles qui étaient consenties aux promoteurs privés. Il n'aurait pas trouvé là de raison de résilier les accords Pearson.

c) Concurrence entre les aéroports

M. Nixon prétend qu'on avait, au début du processus et dans la proposition de Paxport, tenu compte de la question de la concurrence entre les aéroports, mais que celle-ci avait en quelque sorte été reléguée au second plan pour permettre la formation de la coentreprise entre Claridge et Paxport. Claridge avait alors été «forcée» d'accepter une position moins avantageuse que celle dont elle aurait joui aux termes de sa propre

proposition à la seule fin de «sauver» la proposition de Paxport et de préserver la participation de celle-ci⁴⁶⁷.

Voilà bien d'autres déclarations vagues comme celles dont est truffé le rapport Nixon. On y fait état de la «mention implicite, dans la demande de propositions, du fait qu'une concurrence était souhaitable», mais on ne précise pas où cela figure dans le document. Nus avons bien examiné la demande de propositions et n'y avons rien trouvé à l'appui de cette affirmation. La seule disposition qui pourrait à la rigueur être interprétée comme sous-entendant une concurrence est une disposition banale indiquant qu'on vérifiera la conformité des accords avec la Loi sur la concurrence⁴⁶⁸. Cela ne veut toutefois pas dire, même implicitement, que les aéroports doivent se faire concurrence. Les fonctionnaires nous ont informés que cet examen avait été effectué en 1993 et que le Tribunal de la concurrence n'avait rien trouvé à redire aux accords Pearson sous ce rapport.

Pour tout dire, l'argument de M. Nixon est contraire à l'évidence même, car si le gouvernement avait vraiment tenu à ce que les aéroports soient en situation de concurrence en 1992, il aurait fait de ce principe une des conditions de la demande de propositions et Claridge, qui était déjà propriétaire de T3, n'aurait jamais pu participer au processus. De toute évidence, les choses ne se sont pas passées ainsi.

L'affirmation de M. Nixon ressortit aussi d'une logique pour le moins étrange. Les critères qui auraient favorisé Paxport auraient été assouplis pour que Claridge puisse se mettre sur les rangs pour être ensuite «forcée» de participer à une coentreprise grâce à laquelle Paxport pourrait satisfaire à d'autres critères qui, eux, n'auraient pas été assouplis.

Force est de conclure que la position de M. Nixon ne s'appuie pas sur des faits. Elle est irrationnelle.

d) Clause de résiliation

La partie du rapport Nixon qui porte sur les étapes à suivre pour résilier les accords comprend un commentaire sur l'absence de clause de résiliation⁴⁶⁹.

Il est difficile de savoir, dans le contexte, s'il s'agit d'une simple remarque ou d'une observation critique. Nous opterons pour le second cas, car la question a été soulevée sous la forme de critique durant les audiences, ce qui peut avoir suscité des préoccupations.

⁴⁶⁷ Rapport, p. 9-10.

⁴⁶⁸ *Demande de propositions*, p. 53.

⁴⁶⁹ Rapport, p. 13.

Selon les fonctionnaires que nous avons entendus, les baux emphytéotiques comme ceux qui étaient nécessaires pour le projet de réaménagement des aérogares 1 et 2 ne contiennent habituellement pas de clause de résiliation⁴⁷⁰. L'inclusion d'une telle clause transformerait à toutes fins pratiques un bail emphytéotique en bail mensuel que le gouvernement pourrait annuler quand bon lui semble. Or, en l'absence de certitude quant à la durée du bail, pas un prêteur ne consentirait du crédit de l'ordre des sommes qui étaient nécessaires dans le cas des accords Pearson.

Notre conclusion générale, confirmée à maintes reprises durant nos audiences, est que les fonctionnaires possédant les connaissances spécialisées nécessaires ont fourni des explications satisfaisantes pour chacune des clauses techniques des accords. Ces clauses ne reflètent ni une orientation politique donnée, ni même des intérêts politiques, mais sont dictées par la compétence dont ont fait preuve de façon soutenue les fonctionnaires qui ont participé aux accords Pearson.

B) Questions de deuxième importance

M. Nixon a placé une bonne partie des allégations contenues dans son rapport dans une catégorie composée de sujets dont il dit qu'ils viennent «au deuxième rang en importance»⁴⁷¹.

i) Le respect de la politique

M. Nixon soutient que le processus de privatisation des aérogares 1 et 2 déroge à la politique gouvernementale de 1987 concernant les administrations aéroportuaires locales, qui préconise la création de ce genre d'administration pour la gestion des grands aéroports⁴⁷².

Le rapport n'examine pas la politique de 1987 et M. Nixon n'en a pas fait mention de façon précise devant notre comité. Comme nous l'avons vu dans le premier chapitre, la politique de 1987 propose la création d'administrations aéroportuaires locales, considérées comme les meilleurs organismes pour gérer l'ensemble d'un aéroport et non seulement certains de ses éléments, comme les aérogares. La politique encourage explicitement le secteur privé à investir et à s'engager dans des activités aéroportuaires traditionnelles et innovatrices.

⁴⁷⁰ Voir *Délibérations*, 11:25.

⁴⁷¹ Voir *Délibérations*, 26:11.

⁴⁷² Rapport, p. 7 et *Délibérations*, 25:11.

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La location à long terme en vue du réaménagement (et non de la privatisation) des aérogares est tout à fait conforme à la politique, et c'est ainsi que l'ont vu tant les fonctionnaires que les ministres des Transports qui se sont succédé. De plus, comme on nous l'a souvent répété, les accords de l'aéroport Pearson n'empêchaient pas la création d'une administration aéroportuaire locale. D'ailleurs, lors de la préparation des accords, on a discuté de la possibilité de transférer la gestion à une future administration locale.

Nous concluons donc que l'affirmation de M. Nixon selon laquelle la politique n'a pas été respectée est inexacte.

ii) La reconnaissance d'une administration aéroportuaire locale

M. Nixon prétend que le ministre des Transports a refusé d'appuyer des groupes locaux de l'agglomération torontoise qui voulaient créer une administration aéroportuaire locale et que son «refus catégorique était motivé par ce que j'estime être une rivalité limitée et normale entre municipalités»⁴⁷³. À partir du fait que le gouvernement a reconnu des administrations aéroportuaires locales dans d'autres villes et après avoir étudié la situation à Toronto, M. Nixon en est venu à la conclusion que certains avaient eu «l'impression que l'inflexibilité (sic) du gouvernement à ne pas reconnaître une administration aéroportuaire locale visait simplement à éliminer tout risque que ce projet échappe à Paxport Inc.»⁴⁷⁴.

Dans son rapport, M. Nixon ne précise pas s'il a tenté d'obtenir des preuves indépendantes susceptibles de confirmer les dires des personnes mécontentes qui appuyaient la création d'une administration aéroportuaire locale à Toronto. M. Nixon nous a confirmés dans cette impression lors de son passage devant le comité. La conclusion de M. Nixon est simplement la répétition incontestée d'affirmations non fondées formulées par des personnes qui n'étaient pas en mesure de faire une évaluation objective, ou même bien informée, de la politique gouvernementale.

Les preuves que nous avons recueillies nous amènent à rejeter certaines hypothèses clés concernant le refus des ministres de reconnaître l'administration aéroportuaire locale du Grand Toronto en 1993. Premièrement, comme nous l'avons vu, l'obligation pour les municipalités concernées d'appuyer une telle administration par des résolutions n'était pas un obstacle spécialement créé pour la région métropolitaine de Toronto. Cette exigence a été adoptée en 1990 en réponse à une situation survenue à Calgary. Deuxièmement, les tenants torontois de la création d'une administration aéroportuaire locale connaissaient mal les

⁴⁷³ Rapport, p. 10.

⁴⁷⁴ Rapport, p. 10 et *Délibérations*, 25:13.

exigences prévues dans la politique de reconnaissance, problème exacerbé par le fait que la politique ne donne au ministre aucune indication précise pour régler certaines des questions qui se posaient à Toronto. Troisièmement, la «rivalité limitée et normale entre municipalités» est un euphémisme pour désigner les problèmes politiques qui ont entravé la création d'une administration aéroportuaire locale en 1993 et pour lesquels il n'existait, à l'époque, aucune solution immédiate.

À notre avis, l'opinion de M. Nixon (car la simple répétition d'opinions exprimées par des tiers ne peut vraiment pas être qualifiée de conclusion) concernant la réponse du ministre des Transports aux demandes d'agrément d'une administration aéroportuaire locale faites en 1993 est incorrecte parce que fondée sur des renseignements nettement incomplets.

iii) Les conditions de la demande de propositions

M. Nixon a prétendu que l'auteur d'une proposition spontanée aurait été «fortement avantagé» du fait que des déclarations d'intérêt n'ont pas été sollicitées et que le délai n'était que de 90 jours après la diffusion de la demande de propositions⁴⁷⁵.

Si M. Nixon avait rencontré ceux qui ont participé à l'élaboration de la demande de propositions, il aurait été informé, comme nous l'avons été, que les exigences de la demande étaient bien différentes de celles imposées aux propositions spontanées. Les propositions spontanées sont devenues superflues après la diffusion de la demande de propositions et, par conséquent, n'ont pas pu procurer un avantage réel à leurs auteurs.

M. Nixon n'explique pas comment les propositions spontanées auraient pu avantager leurs auteurs. S'il l'avait fait, il lui aurait fallu mentionner que Claridge, comme d'ailleurs d'autres entreprises, avait présenté une proposition spontanée, et aurait donc dû partager avec Paxport tout avantage que cela aurait pu lui procurer.

La mention d'un délai de 90 jours pour d'élaboration des propositions est également trompeuse. Comme nous l'avons vu, le délai officiel a été porté à 127 jours. La diffusion de la demande de propositions a également été précédée d'une longue période (environ 17 mois) pendant laquelle les promoteurs savaient que le gouvernement allait solliciter des propositions et ont pu se préparer en conséquence.

Aucun des consortiums ne s'est plaint, que ce soit au gouvernement ou à notre comité, durant les audiences, que le délai d'élaboration des propositions lui semblait

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Rapport, p. 8 et *Délibérations*, 25:11.

déraisonnable. Les seules plaintes dont nous avons eu connaissance ont été formulées par le groupe qui a tenté, pendant la période réservée à l'élaboration des demandes de propositions, de créer une administration aéroportuaire locale. Comme nous l'avons vu toutefois, son problème tenait essentiellement à l'échec de sa tentative.

Nous concluons donc que l'affirmation de M. Nixon selon laquelle la présentation de propositions spontanées a grandement aidé certaines sociétés à respecter le délai de 90 jours est sans fondement.

iv) La concurrence

M. Nixon allègue que le processus n'a pas attiré le plus grand nombre possible de participants parce que les renseignements nécessaires n'ont pas été assez largement diffusés et que les retardataires n'ont pu présenter une offre concurrentielle, le délai officiel pour l'élaboration des propositions étant trop court⁴⁷⁶.

Ces allégations nous semblent peu convaincantes, puisque le gouvernement a annoncé officiellement, en novembre 1990, son intention de faire appel au secteur privé pour le réaménagement des aérogares et que les médias en ont fait largement état. Que le ministère ait reçu cinq propositions spontanées avant même la diffusion de la demande de propositions donne à penser que l'intention du gouvernement était loin d'être secrète.

De plus, selon le témoignage de fonctionnaires qui connaissent les milieux des affaires concernés, seul un petit nombre de consortiums semblaient s'intéresser au projet et avaient les moyens de réaménager, exploiter et gérer les aérogares d'un grand aéroport. Le ministère n'a reçu aucune plainte de sociétés qui se seraient senties exclues du processus⁴⁷⁷ et aucune ne s'est plainte à nous que le processus suivi l'avait empêchée de faire une offre concurrentielle.

Aucune firme ne semble s'être plainte à M. Nixon non plus. Son rapport ne contient aucune preuve concrète qui appuierait ses allégations, à savoir que l'information au sujet de l'intention du gouvernement était inadéquate et que d'autres sociétés auraient pu être intéressées. Ni M. Nixon ni M. Crosbie, qui a également soulevé ces objections, n'ont pu, au cours de nos audiences, fournir des preuves à l'appui de ces allégations. M. Crosbie a dit à un moment donné que le gouvernement aurait dû dresser son propre plan de réaménagement et ensuite tenter de le «vendre» au secteur privé, mais on serait ainsi revenu à la démarche des appels d'offres classiques et on aurait sacrifié totalement l'appel à l'esprit d'innovation des

⁴⁷⁶ Rapport, p. 8 et *Délibérations*, 25:11.

⁴⁷⁷ Voir *Délibérations*, 8:61.

entrepreneurs privés qui a caractérisé le processus choisi⁴⁷⁸. De plus, le gouvernement aurait eu à assumer d'important coûts initiaux.

MM. Nixon et Crosbie n'ont pas pu non plus donner des exemples de cas où le gouvernement aurait «vendu» traité une demande de propositions de la manière qu'ils préconisent. Finalement, ils n'ont fourni aucune preuve à l'appui de leurs allégations, se contentant de déclarations vagues, comme «Eh bien, le monde est grand...»⁴⁷⁹.

Nous ne nions pas que le monde soit grand. Cela ne veut toutefois pas dire qu'une annonce officielle faite environ 17 mois avant la diffusion de la demande de propositions, de même que des contacts directs avec des sociétés susceptibles de s'intéresser au projet, sont insuffisants. **Nous jugeons donc que les allégations de MM. Nixon et Crosbie, qui prétendent que les sociétés intéressées n'ont pas été suffisamment informées, ne sont pas fondées.**

v) La capacité de financement

M. Nixon déclare «qu'aucune analyse financière préalable n'était exigée dans cette demande de propositions» et qu'il lui semble «peu habituel et malavisé» que la meilleure proposition globale ait été choisie sans qu'on soit absolument sûr de la viabilité financière tant de la proposition que de son auteur⁴⁸⁰. Cela contredit la déclaration de M. Barbeau devant le Comité :

Dans la demande de propositions [...] on demande aux soumissionnaires de faire valoir leur projet du point de vue commercial et, bien sûr, d'être prêts à montrer qu'il est financièrement viable par la suite.⁴⁸¹

Au cours de nos audiences, des fonctionnaires du Ministère, et leur conseiller financier, nous ont clairement dit que la viabilité financière des propositions était l'un des critères essentiels du processus d'évaluation officiel, où elle comptait pour 40 p. 100 de l'évaluation. Cela comprenait une évaluation, attestée par Richardson Greenshields, de la capacité des promoteurs éventuels de respecter leurs engagements financiers. Il est donc faux de prétendre que la viabilité financière n'était pas une condition requise.

⁴⁷⁸ Voir *Délibérations*, 25:106.

⁴⁷⁹ Voir *Délibérations*, 25:107.

⁴⁸⁰ Voir *Délibérations*, 25:11.

⁴⁸¹ Voir *Délibérations*, 2:65

La confirmation de la capacité de financement des propositions, ou la capacité de leurs auteurs d'obtenir le financement requis, devait se faire seulement après la sélection de la meilleure proposition globale, ce qui n'avait rien d'inhabituel. Des fonctionnaires ont déclaré sous serment que cette façon de procéder était pratique courante pour les grands projets de l'État, car une confirmation donnée trop tôt peut se révéler périmée.

Selon les témoignages que nous avons entendus, il est évident que la confirmation de la capacité de financement a été exigée, et ce, officiellement, après la sélection de la proposition de Paxport. L'un des aspects du processus consistait à élaborer des critères raisonnables, conformément à l'avis de Deloitte Touche, qui avait signalé au Ministère qu'il ne serait pas raisonnable d'exiger des preuves concluantes de la capacité de financement dès le début d'un projet de réaménagement en plusieurs phases, puisque la décision des prêteurs de financer les dernières phases du projet repose sur le succès des premières.

L'application des critères de M. Nixon, lesquels exigeaient une «parfaite garantie de viabilité financière», avant la sélection de la meilleure proposition globale aurait grandement réduit la portée de la demande de propositions. Seules les sociétés au portefeuille bien garni auraient pu présenter une offre. Ainsi, en critiquant les exigences relatives à la capacité de financement, M. Nixon s'attaque à son propre argument selon lequel il aurait fallu ouvrir davantage le processus.

Nous concluons que les objections de M. Nixon au sujet des critères financiers appliqués au processus d'évaluation officielle du Ministère sont pleines d'inexactitudes, tant au niveau du processus d'évaluation utilisé qu'au niveau de ce qu'il aurait été raisonnable de faire compte tenu de la nature du projet.

vi) L'intérêt public

M. Nixon affirme que l'importance de l'aéroport Pearson pour le réseau de transport canadien et l'économie ontarienne fait que cet aéroport doit être considéré comme un bien public national et que la gestion des aéroports devrait être confiée à un organisme «fortement soucieux de l'intérêt public» plutôt qu'à des promoteurs privés⁴⁸².

Cet argument illustre la confusion observée ailleurs dans le rapport Nixon, où la distinction entre les aéroports et l'ensemble d'un aéroport n'est pas claire. Malgré l'accord de réaménagement des aéroports, la responsabilité de l'aéroport Pearson incombait toujours au

⁴⁸² Rapport, p. 10-11 et *Délibérations*, 25:11.

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gouvernement, organisme qui devrait paraître aux yeux de M. Nixon, du moins nous l'espérons, assez soucieux de l'intérêt public.

L'argument de M. Nixon semble laisser aussi entendre que les partenariats entre le secteur privé et l'État ne peuvent être structurés de façon à permettre les avantages du secteur privé sur les plans de l'efficacité et de l'adaptation au marché tout en veillant à l'intérêt public. Cet argument remonte aux années 70 ou même avant et ne correspond pas à l'esprit de bien des politiques gouvernementales contemporaines.

De façon plus concrète, s'il voulait exposer un motif suffisant pour remettre en question les accords Pearson, M. Nixon se devait d'éviter les généralités. Il se devait de prouver qu'un investissement de 750 millions dans un projet de réaménagement visant à régler les problèmes bien connus des aérogares 1 et 2, sans frais pour le contribuable canadien, était contraire à l'intérêt public, ce qu'il n'a fait ni dans son rapport, ni au cours de nos audiences. En fait, une version antérieure de son rapport contenait des commentaires favorables à l'investissement, qui ont été supprimés par la suite (on ne sait pourquoi).

D'après les témoignages que nous avons entendus, M. Rowat (qui a négocié les accords définitifs) a remis à M. Nixon un cahier contenant un exposé détaillé sur chacune des dispositions des accords qui concernaient l'intérêt public, de même que des explications sur la façon dont on entendait préserver celui-ci. M. Nixon avait donc suffisamment d'informations en mains pour se pencher sur les questions d'intérêt public s'il avait voulu le faire.

Nous concluons donc que l'objection de M. Nixon à la participation du secteur privé au réaménagement des aérogares de l'aéroport Pearson est peu convaincante.

vii) La durée du bail

M. Nixon soutient que la durée du bail, 57 ans, est excessive. Les exigences de remboursement du capital seront satisfaites longtemps avant son expiration et, compte tenu de l'évolution technologique, il est fort probable que les transports seront bien différents dans 57 ans.

Des spécialistes des transactions immobilières nous ont néanmoins dit qu'un bail d'une durée de 60 à 70 ans conviendrait tout à fait à un projet de réaménagement d'aérogares⁴⁸³. Le bail de l'aérogare 3, dont la durée est comparable à celle des baux des

⁴⁸³ Voir le chap. III.

aérogares 1 et 2, et les baux de durée analogue accordés aux administrations aéroportuaires locales sembleraient conforter les tenants de ce point de vue. M. Nixon n'a pas dit si son opinion s'appuie sur l'avis d'experts du domaine, qui serait en contradiction avec les témoignages que nous avons entendus.

L'argument selon lequel les besoins en matière de transport et d'installations aéroportuaires peuvent changer de façon considérable en 60 ans est incontestable. Toutefois, le rapport Nixon et les observations de son auteur à nos audiences ne nous aident pas à comprendre en quoi exactement cet argument interdit la location à bail des aérogares à des promoteurs privés. En tant que promoteur privé, Pearson Development Corporation aurait eu tout intérêt à faire en sorte que les aérogares demeurent attrayantes pour les transporteurs et les passagers et qu'elles puissent soutenir la concurrence. Autrement, les recettes et la rentabilité en auraient souffert. **Les conditions du bail exigeaient d'ailleurs que les aérogares satisfassent à des normes de niveau mondial. À notre avis, le bail ne nuisait en rien à la capacité de répondre aux besoins futurs. Au contraire, il était un moyen d'inciter le promoteur à voir loin dans sa façon de répondre aux nouveaux besoins.**

Nous concluons donc que les objections de M. Nixon quant à la durée du bail sont sans fondement.

viii) Les recettes

Selon M. Nixon, les recettes que les accords de l'aéroport Pearson devaient procurer au gouvernement étaient «loin d'être énormes»⁴⁸⁴. Il affirme que, durant les premières années du nouveau régime, les recettes auraient été moindres qu'au cours des années précédentes et qu'elles auraient ensuite dépendu d'une tarification ambitieuse risquant de rendre l'aéroport Pearson non concurrentiel.

M. Nixon ne précise pas quel est l'équilibre idéal que son argument laisse sous-entendre, soit des recettes assez élevées pour être presque «énormes», mais pas assez pour que la tarification soit qualifiée d'«ambitieuse». Cet argument comporte cependant plusieurs éléments suffisamment précis pour qu'on puisse y répondre.

Tout d'abord, le fait que les accords procureraient à l'État des recettes modestes les premières années découle de l'entente de report du loyer. Comme on l'a vu, on était convenu de réduire les recettes du gouvernement et du promoteur afin de limiter les augmentations pour les transporteurs en période d'austérité budgétaire. M. Nixon ne mentionne pas qu'il ne

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Rapport, p. 11 et *Délibérations*, 25:12.

s'agit pas pour l'État d'une perte de recettes, mais bien d'un report, les recettes devant être versées plus tard, avec intérêt.

De façon plus générale, les plaintes relatives aux recettes que les accords de l'aéroport Pearson procureraient à l'État ne tiennent pas compte des objectifs multiples des accords : il ne s'agissait pas d'un simple marché commercial. Pourtant, les spécialistes qui ont conseillé le gouvernement sur cet aspect ont conclu que les recettes de l'État pouvaient être considérées comme raisonnables. M. Nixon ne précise pas quelles recettes il aurait considérées comme acceptables et n'indique pas clairement les motifs de son insatisfaction.

Selon nos témoins, la tarification «ambitieuse» dont parle M. Nixon pour les dernières années du bail n'aurait fait qu'amener les frais des aérogares 1 et 2 au niveau de ceux de l'aérogare 3. Il n'y a guère là d'obstacle à la compétitivité. En somme, l'argument de M. Nixon montre que celui-ci ne tient aucun compte du fait que les forces du marché auraient obligé les exploitants de l'aéroport Pearson à maintenir des frais comparables à ceux en vigueur aux autres grands aéroports.

Encore une fois, nous demeurons sceptiques. Non seulement les objections de M. Nixon au sujet des recettes de l'État ne sont pas fondées, mais elles sont exprimées en des termes tellement imprécis qu'elles sont parfois contradictoires.

ix) Rendement pour le promoteur

Le rapport de M. Nixon indique que son auteur fait sien l'avis reçu de M. Crosbie : «... comme m'en a informé mon conseiller en évaluation d'entreprises, le rendement accordé à T1 T2 Limited Partnership pourrait bien, vu la nature de la transaction, être jugé excessif»⁴⁸⁵. Cependant, lorsqu'il a témoigné devant nous, M. Nixon s'est démarqué quelque peu de cet avis, affirmant simplement l'avoir reçu, sans faire d'autres commentaires à ce sujet⁴⁸⁶.

Plusieurs raisons expliquent pourquoi M. Nixon peut avoir voulu se distancier de sa position initiale. Premièrement, son rapport n'explique pas pourquoi il a accepté l'évaluation de M. Crosbie au lieu de celle préparée durant les négociations par la firme Deloitte Touche, qui jugeait que le rendement pour les investisseurs était raisonnable. On pourrait trouver un début d'explication dans l'impartialité de l'évaluation de M. Crosbie évoquée devant nous par M. Nixon⁴⁸⁷. Pourtant, M. Stehelin de Deloitte Touche était manifestement impartial aussi,

⁴⁸⁵ Rapport, p. 11.

⁴⁸⁶ Voir *Délibérations*, 25:13.

⁴⁸⁷ Voir *Délibérations*, 25:74.

comme en témoigne le rapport de mars 1993 dans lequel il refuse d'attester la capacité de financement de la proposition de Paxport. De plus, son rapport d'août 1993, dans lequel il affirme que le rendement pour le promoteur n'était pas excessif, était le fruit de six mois de travail, de sorte qu'il connaissait la question certainement beaucoup mieux que M. Crosbie, qui y avait consacré moins de trois semaines.

Deuxièmement, M. Crosbie ne dit pas que le rendement pour le promoteur est excessif ou devrait être jugé tel, mais seulement qu'il «pourrait bien, vu la nature de la transaction, être jugé excessif». On peut difficilement dire que cet avis réservé constitue une base solide pour prendre une décision, ou même pour réaliser l'ambition plus modeste de M. Nixon, qui consistait à se former une opinion.

L'imprécision de la conclusion de M. Crosbie semble confirmer que, comme M. Stehelin nous l'a dit, il n'est pas facile de déterminer ce qui constitue un rendement raisonnable pour un projet de réaménagement d'aérogares. Dans son rapport à M. Nixon, M. Crosbie accepte comme «raisonnables» les hypothèses à l'appui des projections financières de Pearson Development Corporation et en arrive à un rendement après impôt de 14 p. 100, qui passe à 14,2 p. 100 avec les frais de gestion. Ces chiffres sont comparables à ceux que nous ont fournis M. Stehelin et les représentants du Ministère.

Le rapport Crosbie examine ensuite les critères qui devraient être utilisés pour juger si un rendement est raisonnable. Avec le rendement des services publics comme point de comparaison, le rendement projeté entre dans la fourchette des taux considérés comme raisonnables, même après qu'on ait abaissé cette fourchette de 1 p. 100 (par rapport à celle de Deloitte Touche) pour refléter la «baisse de 1 p. 100 du rendement après impôt enregistrée depuis août 1993 dans les services publics»⁴⁸⁸.

On examine dans le rapport un deuxième critère possible, le rendement des investissements dans l'immobilier en prenant en considération divers facteurs qui contribuent à accroître ou à réduire les risques associés aux accords de l'aéroport Pearson. On fait remarquer que le cadre restreint du mandat de M. Crosbie n'a pas permis à celui-ci d'interroger d'éventuels investisseurs du secteur immobilier en vue d'établir le taux de rendement qui leur paraîtrait raisonnable pour un projet de réaménagement d'aérogare, mais le rapport conclut cependant que, à première vue, dans la perspective d'un investissement immobilier, le rendement projeté (23,6 p. 100 avant impôt pour la durée du projet) pourrait fort bien être supérieur à ceux qui sont exigés sur le marché⁴⁸⁹.

⁴⁸⁸ Rapport Crosbie, p. 5.

⁴⁸⁹ Rapport Crosbie, p. 6.

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Il est également question du rendement des investissements dans l'aérogare 3, bien qu'on ne sache pas clairement s'il faut y voir un troisième critère éventuel, étant donné que le rapport Crosbie reconnaît la difficulté de comparer l'aérogare 3 et les aérogares 1 et 2, et d'établir le rendement actuel. La conclusion de M. Crosbie est qu'un rendement avant impôt de 14,1 p. 100 nous donne «une idée des rendements avant impôt que les détenteurs de capitaux propres auraient exigés pour l'aérogare 3».

Il faut faire remarquer, à l'honneur de M. Crosbie, qu'il a essayé de faire comprendre à M. Nixon, dans son rapport, le caractère subjectif du choix des critères d'évaluation des rendements de même que la grande complexité du dossier. Cependant, il n'a pas parlé des mérites de chaque critère mentionné, obligeant le lecteur à faire un choix arbitraire entre au moins deux d'entre eux, l'un appuyant les accords de l'aéroport Pearson et l'autre menant à la conclusion que le rendement pourrait fort bien être supérieur à ceux qui sont exigés sur le marché. De plus, il ne faudrait pas oublier qu'il était généralement reconnu que le marché immobilier à Toronto était au plus bas de son cycle à la fin de 1993, ce qui fait douter de la valeur d'une référence au secteur immobilier pour évaluer une entente de location à long terme.

Le troisième critère possible est tout à fait différent des deux autres. Nous ne pouvons qu'en conclure que, si ces chiffres sont exacts, ils pourraient confirmer que les intentions de Claridge, comme nous l'a dit M. Coughlin, étaient d'utiliser l'aérogare 3 comme un premier pas vers une participation dans les trois aérogares plutôt qu'une source de recettes à court terme.

Le rapport Crosbie constitue donc une base extrêmement fragile pour critiquer le rendement que la Pearson Development Corporation aurait obtenu. Il obligeait M. Nixon à choisir arbitrairement le critère qui résisterait à la critique, et à donner à la formule «pourrait fort bien être supérieur à ceux qui sont exigés sur le marché», appliquée au rendement, le sens de «trop élevé». M. Nixon n'a pourtant pas hésité. Il s'est formé une opinion.

Le fait que M. Nixon se soit formé une opinion catégorique étonne d'autant plus lorsque son point de vue est mis en regard de l'ébauche du 18 novembre du rapport Crosbie, que nous avons eu l'occasion d'examiner. Dans cette ébauche, M. Crosbie conclut, au sujet du rendement du promoteur, qu'un taux de rendement composé de 23 p. 100 avant impôt ne serait peut-être pas déraisonnable.⁴⁹⁰ **Fait intéressant à noter, une copie de travail du rapport Nixon, elle aussi datée du 18 novembre, décrit le rendement pour le promoteur comme étant déraisonnablement élevé, pour la durée des accords Pearson.**⁴⁹¹ Cette

⁴⁹⁰ Voir *Délibérations*, 30:78

⁴⁹¹ Voir *Délibérations*, 30:79-80

conclusion a subsisté dans les ébauches finales du rapport Nixon et du rapport que M. Crosbie a remis à M. Nixon, ce qui nous amène à nous demander si M. Nixon a fondé son opinion sur le rapport Crosbie ou si c'est l'inverse qui s'est produit.

Signalons que, durant nos audiences, M. Crosbie nous a présenté une autre analyse, faite celle-là après l'annulation du contrat, vraisemblablement dans le but de renforcer des arguments qui pouvaient être considérés comme fragiles. Cette analyse n'a toutefois rien fait de plus que de démontrer ce qui était déjà évident. Par exemple, qu'un rendement plus faible pour le promoteur aurait pu permettre à l'État de toucher des recettes considérablement plus élevées⁴⁹². La conclusion reste toutefois tout aussi ambiguë que celle du rapport Crosbie : «D'après notre analyse, il semble que le gouvernement aurait peut-être été en mesure de gagner beaucoup plus qu'il ne l'a fait»⁴⁹³.

Notre conclusion est différente. Nous ne sommes pas convaincus. Nous pourrions dire, en étant généreux, que les conclusions de M. Crosbie donnaient à M. Nixon une raison de recommander que la question soit examinée de plus près, mais rien de plus.

Nous notons également que la position actuelle du gouvernement fédéral n'appuie pas les conclusions de M. Nixon. Devant la Cour de l'Ontario qui juge le procès intenté contre lui par le promoteur, le gouvernement soutient la thèse que, d'après des déclarations sous serment de M. Desmarais, le rendement pour le promoteur aurait pu être négligeable, et qu'il n'est donc pas nécessaire d'indemniser celui-ci pour la résiliation du contrat.

x) Le déroutement du trafic-passagers dans un rayon de 75 km.

M. Nixon s'oppose à la garantie de 33 millions de passagers, car, selon les renseignements qu'il a obtenus, le besoin de déroutement commencera à se manifester dès qu'on atteindra 30 millions de passagers par an⁴⁹⁴. L'incapacité du gouvernement de dérouter le trafic vers les aéroports situés dans un rayon de 75 kilomètres de Pearson à moins que le niveau d'achalandage à ce dernier aéroport ne reste supérieur à 33 millions de passagers par an est perçue comme une restriction inutile, et qui pourrait créer un engorgement à l'aéroport Pearson et faire obstacle à l'aménagement des aéroports voisins.

Comme nous l'avons vu, les négociateurs ont reconnu que la garantie contre les détournements de trafic était une protection légitime. En effet, en l'absence de cette

⁴⁹² Voir *Délibérations*, 27:20.

⁴⁹³ Voir *Délibérations*, 27:22

⁴⁹⁴ Voir *Délibérations*, 25:13.

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protection, les promoteurs auraient été forcés d'assumer tous les risques inhérents, à la possibilité qu'un gouvernement futur agrandisse un ou plusieurs aéroports sur la douzaine situés dans un rayon de 75 kilomètres ou développe les terrains de Pickering et réduise ainsi considérablement le trafic et les recettes à l'aéroport Pearson. On a aussi admis qu'une garantie contre le déroutement de trafic-passagers aiderait les promoteurs à obtenir du crédit, et ce, à des conditions plus favorables. **Il s'agissait donc de savoir quel seuil serait raisonnable et non pas s'il devrait y en avoir un. Il importe de noter que le rapport Nixon fait état de la même position sur ce point : il ne constate pas la nécessité d'offrir aux promoteurs une certaine protection contre le déroutement de trafic-passagers.**

Les preuves que nous avons accumulées réfutent l'hypothèse selon laquelle une garantie contre le déroutement du trafic-passagers Pearson aurait fait obstacle à l'aménagement des aéroports locaux. D'après un document d'information de Transports Canada, le volume de passagers aux quatre aéroports de la région de Toronto s'élevait, en 1993, à 285 000 et la capacité de ces aéroports était de 1,1 million. Le volume pouvait donc considérablement augmenter avant qu'un réaménagement ne s'impose. Et si cette situation s'était produite avant que le volume à Pearson ne dépasse 33 millions de passagers, le Ministère était d'avis que la disposition permettant le déroutement d'un maximum de 1,5 million de passagers de l'aéroport Pearson garantissait la réalisation de toute expansion nécessaire aux autres aéroports. Le document conclut que lesdites installations auraient à afficher une croissance d'environ 1 000 p. 100 au cours des dix prochaines années pour que la clause sur le déroutement pose problème. Ce document a été fourni par M. Rowat à M. Nixon, mais rien n'en transparaît dans le rapport de ce dernier.

Le rapport Nixon ne fournit rien non plus directement à l'appui de l'hypothèse selon laquelle un achalandage dépassant 30 millions de passagers par an pourrait créer un engorgement à Pearson et, selon ce que nous a dit M. Goudge, les fonctionnaires compétents n'auraient pas été consultés à ce sujet. Le rapport Nixon fait toutefois mention d'une «opinion» énoncée dans la présentation que le Conseil du Trésor aurait étudiée en août 1993.

On nous en a refusé l'accès à cette «opinion» pour la raison que les présentations au Conseil du Trésor sont des documents confidentiels du Cabinet. Nous croyons cependant qu'il faudrait l'examiner dans le contexte du rôle du Secrétariat du Conseil du Trésor. Comme nous l'avons vu, le Secrétariat s'applique à critiquer les propositions ministérielles et à proposer aux ministres des points et des questions qui les aideront à bien examiner les propositions.

Les nombreux témoignages sous serment que nous avons reçus des fonctionnaires réfutent les allégations publiquement attribuées à la présentation en question et en particulier l'affirmation que l'achalandage à l'aéroport Pearson deviendrait problématique au-delà du

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seuil de 30 millions de passagers par an⁴⁹⁵. Le «livre noir» préparé à la fin de juin pour servir de guide durant la dernière phase des négociations, document qui est censé refléter l'avis des fonctionnaires compétents sur la capacité de l'aéroport, énonce certaines options protégeant le promoteur contre le déroutement d'un nombre important de passagers vers d'autres aéroports. Voici ces options : garantie fixe de 33 millions de passagers/an; garantie de 28 à 30 millions de passagers/an, auquel cas la possibilité pour le gouvernement de dérouter les passagers dépendrait des problèmes éventuels de capacité ou de service entre ce seuil et 33 millions de passagers/an; seuil de 33 millions de passagers/an qui pourrait être supprimé par le gouvernement au moment de la cession de terrains additionnels au promoteur (zone 4). Le seuil de 33 millions de passagers/an revient souvent dans ces options. Il est absurde de supposer que les négociateurs du gouvernement ont pu baser leur position de négociation sur un achalandage qui, selon eux, causerait des problèmes.

Selon les témoignages que nous avons entendus, la capacité des trois aérogares de l'aéroport Pearson au début des années 90 était de l'ordre de 28 millions de passagers. Il faut reconnaître que, comme l'a dit le fonctionnaire qui a fourni cette estimation, la capacité est une notion très subjective⁴⁹⁶. Bien que le but premier des accords de Pearson ait été la modernisation des aérogares, nous pouvons affirmer qu'ils auraient contribué modérément à en augmenter la capacité, grâce à l'amélioration de l'efficience globale et à l'ajout de deux nouvelles portes. D'ailleurs, un fonctionnaire entendu le 23 octobre 1995 a dit estimer que la capacité de l'aéroport après les travaux de réaménagement se situerait dans une fourchette allant de 28 à 33 millions de passagers par an. Aussi, le seuil de 33 millions de passagers nous semble raisonnable, d'autant plus que les accords autorisent un déroutement pouvant aller jusqu'à 1,5 million de passagers par an en deçà du seuil avant qu'il ne faille indemniser les promoteurs.

Le seuil finalement incorporé aux accords est nécessairement le fruit de la négociation entre les deux parties. Il importe de signaler que la Pearson Development Corporation avait initialement demandé qu'il soit de 39 millions de passagers. Le seuil de 33 millions de passagers fixé dans les accords montre que les négociateurs du gouvernement ont réussi à faire baisser le chiffre proposé par les promoteurs pour le rapprocher de la limite qu'ils s'étaient fixée avant le début des négociations.

Nous concluons que le seuil de trafic-passagers voulu et obtenu par le gouvernement reflète une évaluation raisonnable de la capacité de l'aéroport après les travaux de réaménagement, sans entraver le progrès aux aéroports des environs. Ni

⁴⁹⁵ Voir *Délibérations*, 29:88.

⁴⁹⁶ Voir *Délibérations*, 6:22.

le Rapport Nixon ni les renseignements que nous avons recueillis n'appuient les soupçons de M. Nixon.

3. La question la plus importante

M. Nixon a signalé qu'une question en particulier l'avait préoccupé plus que toutes les autres : les circonstances entourant la conclusion des accords Pearson. L'importance qu'il accorde à cette question transparaît dans les termes qu'il a choisis pour en parler durant les audiences : «Cependant, le plus important à mes yeux était ...»⁴⁹⁷.

Signalons cependant que le rapport de M. Nixon ne contient pourtant aucune indication de l'importance spéciale de ce qui était devenu, au moment des audiences, le principal grief de M. Nixon. Le libellé du rapport (que M. Nixon a par ailleurs reproduit fidèlement en ce qui concerne cette question durant nos audiences) est le suivant :

Enfin, la conclusion de cette transaction sur l'ordre du Premier ministre en pleine campagne électorale, à un moment où cette affaire soulevait une controverse, bat en brèche, à mon sens, les usages démocratiques normaux et dignes de ce nom. Il est de tradition notoire et respectée jalousement par les gouvernements que, lorsqu'ils dissolvent le Parlement, ils doivent exercer un pouvoir de décision restreint en période électorale. Il ne fait aucun doute qu'une transaction financière d'une telle envergure, qui devait privatiser pour 57 ans un bien public d'importance, n'aurait pas dû être conclue à ce moment-là⁴⁹⁸.

Comme dans le cas de ses autres grandes objections, les termes employés par M. Nixon rendent difficile la détermination du fondement précis de ses opinions. L'objection de M. Nixon à la conclusion des accords durant la campagne électorale ne renvoie pas directement à une convention constitutionnelle, bien que la mention de «ce qui se fait normalement dans un régime démocratique» et de certaines «traditions» apparemment normatives laisse supposer que c'est ce que M. Nixon avait en tête.

L'opinion de M. Nixon sur les conventions constitutionnelles ne s'inspire pas de l'avis d'universitaires ou de spécialistes du domaine et ne s'appuie sur aucune référence à de telles autorités⁴⁹⁹. Il s'agit tout au plus d'une conviction personnelle. Toutefois, comme nous l'avons

⁴⁹⁷ Voir *Délibérations*, 25:11.

⁴⁹⁸ Rapport, p. 8.

⁴⁹⁹ Voir *Délibérations*, 25:45-46.

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dit précédemment, les convictions personnelles, aussi fortes soient-elles, ne sont pas des conventions constitutionnelles.

Nos constatations sur la question des conventions constitutionnelles tacites ne confirment pas le point de vue de M. Nixon. Nos discussions avec des universitaires ont confirmé l'idée qu'une convention s'applique dans le cas du gouvernement défait aux élections ou au Parlement. Nous n'avons cependant trouvé aucune preuve de l'existence d'une convention voulant qu'un gouvernement qui n'a pas été défait au Parlement soit limité dans son action durant une campagne électorale. En fait, la convention serait plutôt qu'il est tenu de continuer de gouverner durant cette période.

En outre, selon le seul universitaire qui estimait qu'une convention constitutionnelle limite l'action du gouvernement en période électorale, cette convention ne s'appliquerait que si la signature des accords Pearson constituait un acte dépassant le cours normal de l'administration⁵⁰⁰. Donc, à moins que cela ne soit avéré, la conclusion des accords Pearson ne représente même pas une violation de la prétendue convention constitutionnelle que les informations que nous avons réunies nous ont amenés à rejeter.

M. Nixon estime que ce qu'il qualifie de «transaction financière d'une telle envergure» dépasse le cours normal de l'administration, mais c'est là une affirmation dont il est permis de douter. Comme il l'admet lui-même, il s'agissait de la signature d'une entente qui avait été conclue antérieurement, avant même le déclenchement des élections. Comme l'indiquent nos informations, la date de signature elle-même avait été convenue entre les fonctionnaires et les promoteurs en juillet 1993 et l'entente sur le fond des accords a été conclue en août 1993, avec l'approbation du Conseil du Trésor et du Cabinet. Si des changements de fond avaient été apportés aux accords après le mois d'août, il aurait fallu soumettre une nouvelle présentation au Conseil du Trésor. Or, les personnes que nous avons entendues ont affirmé à l'unanimité que cela n'était pas nécessaire.

Comme l'a dit le ministre Corbeil en décrivant les événements d'octobre 1993, on a simplement signé des documents juridiques préparés par les fonctionnaires durant le mois de septembre, afin de conclure les accords intervenus en août. Ce n'est pas en concluant les accords, mais en fait en refusant de les conclure qu'on aurait en l'occurrence contrevenu au cours normal de l'administration. À notre avis, si une convention constitutionnelle interdisant la prise de décisions importantes s'était effectivement appliquée au gouvernement le 7 octobre 1993, elle aurait exigé la conclusion des accords et non l'inverse.

⁵⁰⁰

Voir le chap. V, Observations et conclusions.

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On pourrait par ailleurs soutenir que, même si la conclusion des accords en pleine campagne électorale était tout à fait correcte, c'était là un geste imprudent sur le plan politique étant donné la controverse qui entourait cette question. C'est l'opinion qu'ont exprimée trois des universitaires que nous avons consultés⁵⁰¹, mais il s'agit là d'un jugement hautement politique qui, à notre avis, déborde largement le cadre d'expertise propre à notre groupe d'universitaires. Il se peut néanmoins que ce soit là le fondement de l'objection de M. Nixon.

Que la conclusion des accords ait été imprudente sur le plan politique est un point de vue pour le moins douteux. La controverse politique a éclaté durant la campagne électorale parce que des gens intéressés de près par la création d'une administration aéroportuaire locale à Toronto s'en sont ouverts aux médias et parce que le chef de l'opposition à l'époque, M. Jean Chrétien, a fait son travail de critique du gouvernement. Soutenir que le gouvernement aurait dû céder devant ces critiques et refuser de respecter la date de signature fixée en juillet 1993 revient dangereusement à dire que ce sont les partis de l'opposition qui devraient gouverner durant une campagne électorale. La convention constitutionnelle veut que le gouvernement soit tenu de continuer de gouverner après l'émission des brefs d'élection.

Ce serait aussi faire bien peu de cas des graves conséquences auxquelles le gouvernement se serait exposé s'il avait refusé de conclure les accords finals. À moins de réussir à persuader les promoteurs à retarder volontairement la signature des accords — la seule solution de rechange que proposaient les fonctionnaires — les promoteurs auraient intenté des poursuites contre le gouvernement.

À différents moments au cours des délibérations, on a soulevé la question de la responsabilité des parties, l'une à l'égard de l'autre, à mesure que progressaient les négociations. Tant M^{me} Bourgon que M. Rowat ont parlé de responsabilité croissante à chaque stade.

En fait, il se pourrait que, durant les mois d'août et de septembre 1993, les parties aient été dans la situation décrite par le professeur G.H.L. Fridman, une autorité en droit contractuel au Canada (Troisième édition, Toronto, Carswell, 1994, p. 23). La Pearson Development Corporation et le gouvernement du Canada avaient peut-être effectivement atteint un stade dans les négociations où l'on pouvait dire non seulement qu'ils avaient fait la preuve de leur intention de se lier, mais aussi que la nature, la portée et la forme de ce lien étaient suffisamment établies pour donner lieu à un contrat admissible et exécutoire.

⁵⁰¹ Voir *Délibérations*, 24:42.

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La décision de conclure les accords le 7 octobre 1993 était tout à fait correcte; elle respectait la date limite fixée par les fonctionnaires et le promoteur en juillet 1993 et épargnait au contribuable canadien le coût que la décision imprudente de ne pas signer les accords aurait entraîné.

Ce qui s'est passé le 7 octobre 1993 n'était pas une tentative pour conclure à la hâte les accords de l'aéroport Pearson avant un changement de gouvernement. Ce n'était que l'achèvement, à la date de l'échéance fixée depuis longtemps, d'un long processus dans lequel les décisions essentielles avaient toutes été prises bien avant l'émission des brefs d'élection.

À notre avis, l'opinion de M. Nixon traduit une réaction très personnelle, qui s'explique surtout par les passions hautement partisans que fait naître une campagne électorale. Cette opinion n'est appuyée par aucune convention constitutionnelle reconnue au Canada en droit contractuel ni par des motifs raisonnables de prudence politique.

4) Les priorités de M. Nixon

Lorsque M. Nixon a comparu devant nous, nous lui avons demandé de classer par ordre de priorité les divers sujets abordés dans son rapport pour rectifier ce que nous considérons comme une sérieuse lacune. En effet, M. Nixon ne donne aucune indication dans son rapport du poids relatif des objections qu'il formule à l'endroit des accords eux-mêmes ou du processus dont il sont issus. Il se contente de faire une recommandation globale après une liste hétérogène de critiques, certaines visant la substance des accords, d'autres le processus et d'autres encore (comme nous l'avons montré) ne visant clairement ni l'une ni l'autre.

Cette absence de priorités reflète en partie l'absence de critères clairs. Le rapport de M. Nixon est tout à fait muet quant aux critères auxquels devraient satisfaire les accords Pearson. Il n'y a aucune mention quant aux critères dont un nouveau gouvernement devrait se fonder pour poser un jugement sur les activités de son prédécesseur et notamment pour prendre des décisions aux ramifications aussi importantes que la décision de résilier ces accords. À la lecture de son rapport, on ne sait pas lesquelles des allégations qu'il contient sont importantes, et lesquelles ont une importance relativement mineure, ni sur quoi M. Nixon s'est fondé pour conclure que le poids des faits observés était suffisant pour justifier la résiliation des accords. Même après plusieurs journées d'audience passées à explorer cette question avec lui, le lien précis entre les observations de M. Nixon et sa recommandation nous échappe.

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En fait, les propos de M. Nixon durant les audiences nous ont laissés encore plus perplexes. Comme on l'a vu, lorsqu'on lui a demandé d'établir un ordre de priorité, M. Nixon a dit que, si un argument avait joué un rôle décisif, c'était le fait que les accords aient été conclus durant la campagne électorale à la demande de la Première ministre et dans le contexte d'une controverse politique.

Cependant, même si la signature des accords en octobre 1993 avait contrevenu à une convention constitutionnelle évidente, la résiliation de ces accords n'était pas le bon remède. Comme nous l'affirmons au début du présent rapport, la résiliation d'un accord n'est opportune que si les personnes affectées méritent une sanction ou si le fond de l'accord est si contraire à l'intérêt public qu'elle est justifiée pour ce seul motif. S'il y avait eu infraction à une convention constitutionnelle, les responsables de cette action accidentelle ou délibérée seraient la Première ministre et le ministre des Transports, et non les promoteurs, les voyageurs ou les contribuables canadiens, lesquels ont payé le prix de la sanction recommandée par M. Nixon.

En l'absence d'infraction à une convention constitutionnelle - et nous avons établi qu'il n'y avait pas d'infraction -, la date à laquelle les contrats ont été conclus perd toute pertinence. Les contrats sont valables ou ils ne le sont pas. En choisissant la date de la conclusion des accords comme son motif premier pour en recommander la résiliation, M. Nixon en reconnaît implicitement le bien-fondé.

Sur la foi des priorités déclarées de M. Nixon, nous concluons que ce qu'il considérait comme son plus important reproche au sujet des accords Pearson, n'aurait pas suffi à justifier sa recommandation d'annuler lesdits accords.

5. Conclusion

A) Le rapport Nixon

M. Nixon a mentionné à plusieurs reprises durant nos audiences que sa tâche consistait à donner au premier ministre des opinions et des avis personnels pour l'aider à prendre une décision au sujet des accords de l'aéroport Pearson. L'étude qu'il a faite lui a effectivement permis de se former une opinion et de donner des avis.

À notre avis, toutefois, sa tâche ne consistait pas seulement à se former une opinion, mais il devait se former une opinion responsable à laquelle le premier ministre du Canada aurait pu se fier pour décider du sort d'un projet de 750 millions qui représentait littéralement des années de travail par une importante équipe de fonctionnaires, ainsi que par les promoteurs, et était lourd de conséquences pour les transporteurs aériens, les passagers,

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l'économie de la région de Toronto et, en bout de ligne, la crédibilité du gouvernement dans ses futures négociations commerciales.

Les conclusions de M. Nixon n'ont presque aucun fondement, étant donné qu'elles s'appuient sur les critiques non fondées d'individus mécontents, qui n'attendaient que l'occasion d'entrer en contact avec lui, pour critiquer le projet Pearson. Elles sont en outre remarquablement semblables dans leur ambiguïté et dans l'absence apparente de réflexion sur les normes dont elles s'inspirent. Elles ne méritent pas d'être décrites comme des conclusions d'enquête, ni même comme des opinions, pour reprendre le mot employé par M. Nixon. Elles ne sont rien d'autres que des impressions déguisées en conclusions.

Si nous laissons les conclusions de côté pour examiner seulement la méthode employée, il nous vient de sérieux doutes sur le jugement dont a fait preuve M. Nixon en donnant un avis ferme au Premier ministre. Le temps dont il a disposé pour faire son étude, les renseignements et les analyses qu'il a obtenus étaient clairement insuffisants pour permettre des conclusions sans réserve au sujet d'un contrat aussi complexe et important que le contrat de réaménagement de l'aéroport Pearson.

Qui plus est, l'imprécision des critères appliqués par M. Nixon aux accords Pearson lui a permis d'éviter une étude sérieuse des diverses options du gouvernement et une réflexion éclairée sur la meilleure façon de remédier aux lacunes qu'il avait décelées.

Dès le début de son étude, M. Nixon a reçu de M. Rowat une note précisant que le gouvernement pouvait essayer de renégocier tout élément insatisfaisant des accords. Cette solution aurait été plus appropriée, au regard des constatations de M. Nixon, que celle de recommander une résiliation complète. En annulant l'entente, le gouvernement a mis un terme à un programme de réaménagement jugé par M. Nixon lui-même comme extrêmement prometteur, a repoussé la solution de problèmes dans les aéroports et a puni tout un groupe de personnes qui n'avaient rien à voir avec le principal défaut trouvé par M. Nixon, soit que la conclusion des accords s'était faite en période électorale.

M. Nixon aurait mieux servi son premier ministre, et son pays, s'il avait reconnu les limites que lui imposait l'échéance qui lui avait été fixée. Nous croyons que la recommandation qu'une étude plus approfondie était nécessaire pour qu'on puisse prendre une décision responsable aurait ouvert la porte à un examen plus poussé de toute cette question. Les erreurs graves sur lesquelles la recommandation de M. Nixon était fondée auraient été décelées avant qu'il ne soit trop tard. On aurait pu ainsi se donner le temps de bien peser les solutions de rechange qui s'offraient au gouvernement, notamment la possibilité de renégocier certaines des dispositions des accords pour en améliorer des aspects précis.

B) La décision d'annuler les accords

Le premier ministre Chrétien avait manifestement une grande confiance dans le jugement de M. Nixon puisqu'il a annoncé l'annulation des accords de l'aéroport Pearson quatre jours à peine après avoir reçu son rapport, sans donner d'autre justification.

Par suite de cette décision, plusieurs choses importantes, et hautement souhaitables, n'ont pu être réalisées. On n'a pu procéder au réaménagement des aérogares 1 et 2, besoin qui était presque universellement reconnu, et on a perdu l'occasion de faire ces travaux avant l'augmentation prévue de l'achalandage.

On n'a pas non plus établi de modèle de partenariat innovateur entre le secteur public et le secteur privé, ce qui aurait répondu à un besoin immédiat en ces temps où nous devons réinventer le gouvernement.

On n'a pas vu apparaître un participant canadien mondialement reconnu dans le secteur du réaménagement et de l'exploitation des aéroports, ce qui implique des pertes incalculables en termes de manques à gagner et d'occasions d'affaires manquées.

On n'a pu profiter de l'emploi prévu de quelque 1 000 travailleurs pour les travaux de réaménagement, stimulant dont l'industrie de la construction à Toronto avait grandement besoin à l'automne de 1993 et dont elle a toujours besoin, ni des milliers d'emplois indirects qui, selon les estimations, auraient été créés dans la région de Toronto.

Par ailleurs, l'annulation a eu un certain nombre de conséquences indésirables. Tout d'abord, les promoteurs ont intenté des poursuites contre le gouvernement fédéral, forçant immédiatement le gouvernement à dépenser l'argent des contribuables pour se défendre, avec ce que cela implique de dépenses éventuelles liées aux règlements.

En outre, le gouvernement a déposé une mesure draconienne visant à enlever aux promoteurs le droit de s'adresser aux tribunaux pour obtenir réparation : si la loi est adoptée, elle créera un précédent qui pourrait refroidir à tout jamais les relations entre le gouvernement et ses partenaires commerciaux.

Enfin, le groupe Matthews ayant fait faillite, quelque 750 personnes ont perdu leur emploi et bon nombre d'entre elles étaient toujours au chômage lorsque M. Don Matthews a témoigné devant nous le 13 septembre 1995.

Voilà un bilan lamentable. Prise ostensiblement pour défendre l'intérêt public, la décision de résilier les accords de l'aéroport Pearson ne procure aucun avantage aux Canadiens. Nous estimons qu'elle témoigne d'un inexcusable manque de jugement.

Les émotions que suscitent les campagnes électorales sont mauvaises conseillères et l'on doit se garder de se laisser influencer par elles si l'on veut assumer de façon responsable cette charge infiniment complexe qu'est l'élaboration de politiques publiques avisées.

Rapport du Comité spécial du Sénat
sur les accords de l'aéroport Pearson

Durant le cours de nos audiences, nous avons fait plusieurs constatations et sommes arrivés à des conclusions préliminaires exposées à la fin de chacun des chapitres du rapport, et que nous reprenons ci-dessous, accompagnées dans certains cas d'observations complémentaires.

C'est sur la base de ces constatations et conclusions préliminaires que nous sommes arrivés à des conclusions générales sur les grandes questions que soulèvent les accords Pearson et aux recommandations qui suivent.

Le processus

1) Nous concluons que rien ne permet d'infirmier les propos de tous les participants, unanimement convaincus de l'intégrité totale du processus qui a abouti aux accords Pearson, depuis la décision prise en 1990 de faire appel au secteur privé pour le réaménagement des aéroports jusqu'à la fin de 1993 avec la fin des négociations, l'approbation du Cabinet et la conclusion des accords.

2) Nous concluons que toutes les mesures nécessaires pour faire en sorte que les intérêts privés ne l'emportent pas sur l'intérêt public, tel que perçu par les représentants du peuple démocratiquement élus, ont été prises à toutes les étapes et n'ont été compromises en aucune façon, cette conclusion valant pour tous les aspects du projet de réaménagement de l'aéroport Pearson.

Le cadre stratégique

3) Nous concluons que, mettant pour la première fois l'accent sur l'orientation commerciale et la participation du secteur privé, la politique de 1987 sur la cession de la gestion d'aéroports ne se contentait pas de proposer une solution innovatrice aux problèmes que posait le rôle de Transports Canada dans la gestion des aéroports au milieu des années 80. Elle préfigurait les vastes mesures des années 90, notamment l'examen des programmes de 1994-1995, avec son ambitieuse tentative de redéfinir le rôle du gouvernement dans l'économie.

4) Nous concluons que les fonctionnaires qui ont conçu la nouvelle politique des aéroports des années 80 devraient avoir le sentiment d'avoir accompli quelque chose d'important, car on leur doit la première étape, essentielle, de la réorientation de la politique dans ce secteur. Il importe aussi de dire que la vision qui a guidé les fonctionnaires témoignait presque d'une certaine prescience de ce qui allait se passer dans les années 90.

5) Nous concluons que la location à bail des aérogares 1 et 2 au secteur privé, avec l'obligation pour celui-ci de réaménager les installations, était conforme à la politique du gouvernement fédéral.

La décision de faire appel au secteur privé

6) Nous concluons que l'urgence des travaux de réaménagement ne faisait aucun doute pour les nombreux usagers et autres intéressés qui ont signalé la chose au Ministre, et que le gouvernement a eu raison d'aller de l'avant.

7) Nous concluons qu'il aurait été irresponsable de s'abstenir de toute action sous prétexte que des municipalités de Toronto montraient les premiers signes d'une volonté de se donner un instrument pour gérer l'aéroport, notamment les aérogares.

8) Nous concluons que si le Ministre avait refusé d'agir en 1990 et décidé d'attendre l'établissement d'une administration aéroportuaire locale, il aurait pu être accusé à juste titre de ne tenir aucun compte des besoins exprimés de la région de Toronto, quant à la nécessité de moderniser les aérogares 1 et 2.

9) Nous concluons que la décision de ne pas agir en 1990 aurait été contraire à l'esprit de la politique de 1987, laquelle visait précisément à libérer les aéroports de la servitude d'une gestion publique centralisée et à leur permettre de répondre aux besoins locaux et aux exigences des voyageurs.

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10) Nous concluons, à l'instar des représentants d'Air Canada qui ont comparu devant nous, que 1993-1994 aurait été la période idéale pour commencer les travaux de réaménagement des aéroports 1 et 2.

La préparation de la demande de propositions

11) Nous concluons que le gouvernement a beaucoup appris de la construction de l'aéroport 3 par des intérêts privés et qu'il a mis cette expérience à profit dans le processus de réaménagement des aéroports 1 et 2.

12) Nous concluons que, du fait que le gouvernement a sollicité l'avis de tous ceux qui s'intéressaient à la demande de propositions, celle-ci prenait dûment en compte les préoccupations des compagnies aériennes, comme en témoigne la ratification des accords Pearson par Air Canada.

13) Nous concluons que les arguments invoqués pour retarder les travaux de réaménagement au bénéfice des tenants de l'établissement d'une administration aéroportuaire à Toronto n'étaient pas plus fondés en 1992 qu'ils ne l'étaient en 1990. Ils étaient peut-être encore moins étant donné que la demande de propositions était la preuve manifeste que les travaux de réaménagement n'empêcheraient pas la création d'une administration aéroportuaire locale et qu'ils pourraient même être gérés par elle.

14) Nous concluons que, par l'inclusion d'exigences techniques dans la demande de propositions, le ministre et les fonctionnaires ont réussi à préserver au mieux l'intérêt public en établissant un processus concurrentiel équitable. Considérées globalement, ces exigences proposaient au secteur privé le défi de concevoir, à l'intention du gouvernement et de la population canadienne, des solutions novatrices pour la modernisation des aéroports de l'aéroport Pearson, propositions qui feraient l'objet d'un concours juste et ouvert au terme duquel la meilleure serait choisie.

15) Nous concluons que, en raison de la longue période qui s'est écoulée entre l'annonce qu'il y aurait une demande de propositions et la date de sa parution (quelque 18 mois), et du fait que l'on connaissait les entreprises capables de se charger d'un projet de cette envergure grâce au contrat de l'aéroport 3, on a considéré superflue l'étape des expressions d'intérêt et décidé que le délai de réponse pouvait être fixé à 90 jours (bien qu'il ait par la suite été porté à 127 jours), ce qui est la norme dans un cas pareil.

16) Nous concluons que la demande de propositions était scrupuleusement équitable. À vrai dire, on ne saurait trouver meilleur exemple de l'attitude novatrice que volait susciter la politique de 1987 sur la gestion des aéroports.

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La décision d'annoncer la meilleure proposition globale

17) Nous concluons que, entre le 16 mars et le 7 décembre 1992, le ministère des Transports a appliqué un processus d'évaluation extrêmement complet et nous notons que l'équipe d'évaluation a soumis un rapport unanime.

18) Nous concluons que ce processus d'évaluation a été très rigoureux et notons qu'il a été supervisé par Price Waterhouse et vérifié par la firme Raymond, Chabot, Martin, Paré, et que les plans financiers soumis par les proposant ont été examinés par des experts en finances de Richardson, Greenshields.

19) Nous concluons que l'annonce de la meilleure proposition globale en décembre 1992 non seulement était conforme à l'intérêt public, mais s'imposait.

20) Nous concluons que la seule chose qui aurait pu rendre cette annonce inopportune eût été la décision du gouvernement — contraire aux considérations examinées au chapitre IV - d'interrompre le processus et de laisser les aéroports en l'état.

La négociation et la conclusion des accords

L'administration aéroportuaire locale

21) Nous concluons qu'il aurait été irresponsable de retarder le réaménagement des aéroports en 1993 dans l'espoir que les problèmes politiques liés à la création de l'administration aéroportuaire locale soient bientôt résolus. Cela aurait été prendre ses désirs pour des réalités au lieu de s'attaquer aux problèmes des aéroports 1 et 2 de l'aéroport Pearson.

22) Nous concluons à la position du gouvernement voulant que la ville de Mississauga, où l'aéroport est situé, devait approuver sans condition la création d'une AAL avant que l'on puisse en établir une pour la région métropolitaine de Toronto.

23) Nous concluons que, entre 1989 et le 7 octobre 1993, il n'existait aucune administration aéroportuaire locale dans la région métropolitaine de Toronto à laquelle on aurait pu céder l'aéroport Pearson.

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La fusion

24) Nous concluons que les proposants ont pris seuls la décision d'explorer les synergies qui pourraient résulter de l'amalgamation de leurs efforts.

25) Nous concluons qu'il n'existe absolument aucune preuve de collusion entre les parties durant la période antérieure au 7 décembre 1992.

26) Nous concluons que l'idée de la fusion des deux proposants n'émanait pas du gouvernement ou de fonctionnaires.

Responsabilité

27) Nous concluons, à l'instar de bon nombre des témoins que nous avons entendus, qu'à chaque étape importante du processus de négociation et avec la conclusion, la signature et le retrait des contrats des mains du tiers, les parties se seraient exposées à des responsabilités réelles et importantes si l'une ou l'autre avait décidé de faire marche arrière.

28) Nous concluons qu'il est raisonnable d'affirmer qu'à la fin d'août 1993, sinon avant, les parties avaient atteint un stade dans les négociations où leur intention de se lier donnait lieu un contrat légalement admissible et exécutoire.

29) Nous concluons que l'action du gouvernement, entre le moment de l'émission des brefs d'élection et celui du scrutin, n'était assujettie à aucune convention constitutionnelle restrictive. Le Premier ministre et le Ministre des Transports n'ont aucunement enfreint la Constitution à l'automne 1993 en jouant leur rôle dans la conclusion de l'entente Pearson. Au contraire, ils n'ont fait que leur devoir en continuant de gouverner jusqu'à ce que la population se prononce, le jour des élections.

Lobbyistes

30) Nous concluons que si les lobbyistes étaient certes actifs dans ce dossier, leur travail a consisté principalement à rassembler de l'information à l'intention de leurs clients.

31) Nous sommes d'avis avec tous les témoins des secteurs public et privé qui ont participé au processus, que les lobbyistes n'ont eu aucune influence réelle sur le processus de sélection et sur les décisions qui ont été prises.

Taux de rendement

32) Nous concluons que le taux de rendement pour les promoteurs et l'État prévu dans les contrats de l'aéroport Pearson était juste compte tenu des risques en cause et du montant des investissements nécessaires.

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Le projet

33) Nous concluons que, dans les circonstances, les accords Pearson prévoyant un investissement de 700 millions de dollars du secteur privé pour des travaux de réaménagement qu'il aurait fallu autrement financer avec les deniers publics ont été conclus dans l'intérêt de tous les Canadiens.

34) Nous concluons, à la lumière des faits portés à notre connaissance, que les négociateurs des accords de l'aéroport Pearson se trouvaient devant une tâche extrêmement difficile, compte tenu de la complexité du projet et des autres facteurs exposés ci-dessus. Ils ont accompli un travail remarquable en veillant à ce que les objectifs initiaux du gouvernement soient atteints et en obtenant ce qui aurait pu être un avantage durable pour les contribuables canadiens.

L'annulation des accords

Le Rapport Nixon

35) Nous concluons que les conclusions du rapport de M. Nixon n'ont aucun fondement et ne reflètent que les critiques non fondées d'individus mécontents, qui n'attendaient que l'occasion d'entrer en contact avec lui. Le rapport est en outre remarquablement cohérent dans ses ambiguïtés et dans l'absence apparente de réflexion sur les critères dont il s'inspire. Il ne mérite pas d'être qualifié d'enquête, au sens courant du terme. Il s'agit d'une collection d'impressions déguisées en conclusions.

36) Nous concluons que la méthode employée par M. Nixon fait peser de sérieux doutes sur le jugement dont celui-ci a fait preuve en donnant un avis ferme au Premier ministre. Le temps dont il a disposé pour faire son étude, les renseignements et les analyses qu'il a obtenus étaient clairement insuffisants pour permettre des conclusions sans réserve au sujet d'un contrat aussi complexe et important que le projet de réaménagement de l'aéroport Pearson.

37) Nous concluons que M. Nixon aurait mieux servi son Premier ministre, et son pays, s'il avait reconnu les limites que lui imposait l'échéance qui lui avait été fixée. Nous croyons que la recommandation de la nécessité d'une étude plus approfondie en vue de prendre une décision responsable aurait ouvert la porte à un examen plus poussé de toute cette question. Les erreurs graves sur lesquelles la recommandation de M. Nixon était fondée auraient été décelées avant qu'il ne soit trop tard. On aurait pu ainsi se donner le temps de bien peser les solutions de rechange qui s'offraient au gouvernement, notamment la possibilité de renégocier certaines dispositions des accords si des améliorations se révélaient nécessaires.

Chapitre VII - Constations, conclusions et recommandations

La décision d'annuler les accords

38) Nous concluons que la décision de résilier les accords de l'aéroport Pearson ne procure aucun avantage aux Canadiens. Nous étions qu'elle témoigne d'un inexcusable manque de jugement de la part du gouvernement du Canada.

Conclusions générales et recommandations

Au terme de notre enquête sur la résiliation des accords de l'aéroport Pearson, nous sommes arrivés à quatre conclusions, en accord avec les règles que nous avons considérées comme appropriées en l'occurrence.

Premièrement, s'agissant de la modernisation des aéroports de l'aéroport Pearson, nous n'avons trouvé aucune preuve qu'on aurait délibérément fait passer des intérêts privés avant l'intérêt public, à quelque moment que ce soit du processus, ou même avant qu'il ne débute.

Deuxièmement, rien dans les informations que nous avons réunies ne permet de conclure que des pressions politiques ou d'autres événements auraient compromis l'élaboration des accords Pearson, ni que les élus, les hauts fonctionnaires ou et les représentants du secteur privé concernés auraient failli à leur tâche.

1) Nous concluons que les insinuations formulées dans le rapport Nixon voulant que la proposition de Paxport et le consortium Paxport aient fait l'objet de favoritisme sont une atteinte non fondée à la compétence professionnelle de tous ceux qui ont travaillé à la réalisation des accords Pearson.

Troisièmement, nous n'avons trouvé aucune raison de nous élever contre la conception de l'intérêt public qui anime les accords Pearson. Nous pensons au contraire qu'on a su exploiter avec bonheur les atouts du secteur privé d'une manière qui aurait permis à la fois de répondre aux impératifs de l'entreprise privée et d'atteindre les objectifs des pouvoirs publics.

2) Nous concluons que la politique de gestion des aéroports élaborée par le gouvernement en 1987, y compris les dispositions prévoyant expressément la participation d'intérêts privés dans la gestion des aéroports était appropriée, et nous sommes heureux de constater que la politique relative aux administrations aéroportuaires locales conserve cette orientation.

Quatrièmement, notre examen de l'ensemble du processus ayant abouti aux accords Pearson a révélé une histoire d'une complexité parfois byzantine, où les exemples de limites

Chapitre VII - Constations, conclusions et recommandations

et de faiblesses humaines n'ont rien d'anormal. Cela ne prouve pas pour autant l'existence de la sombre conspiration imaginée par les plus fervents détracteurs du projet, notamment par M. Nixon.

3) Nous concluons que l'enquête du Sénat sur le processus suivi et les accords qui en sont issus a permis de reconstituer une chaîne d'événements absolument banale qui se résume essentiellement à de beaux efforts, déployés en toute bonne foi par toutes les parties concernées, pour servir les intérêts des Canadiens.

4) Nous concluons que la résiliation des accords de l'aéroport Pearson a eu des conséquences fâcheuses aboutissant à un très sombre bilan : les aérogares 1 et 2 ne sont toujours pas réaménagés; des emplois ont été perdus et d'autres n'ont pas été créés; des poursuites ont été intentées contre l'État; on a laissé passer l'occasion d'une coopération entre le secteur public et le secteur privé; et un manque à gagner pour l'État. La résiliation des accords n'a rien donné de bon aux Canadiens. Il s'agit d'un manque de jugement inqualifiable de la part du gouvernement du Canada, dû à l'appât de gains politiques immédiats, qui aura des répercussions économiques et sociales négatives à long terme.

Nous recommandons qu'on tire du compte rendu détaillé des accords de l'aéroport international Pearson, les enseignements qui s'imposent, tant au ministère des Transports et dans la fonction publique en général, que parmi les spécialistes de la politique publique et des relations entre l'État et l'entreprise privée. Nous espérons aussi que les milieux politiques y verront une leçon de prudence.

Nous recommandons que tous les décideurs politiques, quelle que soit leur affiliation, tirent la leçon essentielle de l'affaire Pearson : les émotions que suscitent les campagnes électorales sont mauvaises conseillères et l'on doit se garder de se laisser influencer par elles si l'on veut assumer de façon responsable cette charge infiniment complexe qu'est l'élaboration de la politique publique. En outre, quiconque s'engage, durant une campagne électorale, à remettre en question d'importantes décisions prises par un gouvernement précédent, devrait s'assurer d'avoir pris cette décision en dehors de toute considération partisane.

COMITÉ SPÉCIAL DU SÉNAT SUR LES ACCORDS DE L'AÉROPORT PEARSON

RAPPORT MINORITAIRE

«Pour tous ceux qui critiquent notre gouvernement, cela ressemble à une récompense accordée vite fait à des amis qui veulent aménager des aéroports; ça a un goût douteux, ça n'annonce rien de bon, ça laisse planer toutes sortes de soupçons et ça ne rime à rien.»

- Don Blenkarn, député conservateur de Mississauga-Sud, dans une lettre adressée au ministre des Transports, Jean Corbeil, le 13 mars 1992

«Les faits sont donc qu'elle [la très honorable Kim Campbell] a choisi d'approuver la signature des accords de l'aéroport Pearson au moment où elle savait qu'elle ne pourrait pas assumer les conséquences politiques de cette décision. Et, selon moi, cela ressemble beaucoup au comportement d'un gouvernement qui a déjà perdu l'autorité morale de gouverner. Affirmer que sa décision était un exercice du pouvoir déplacé du point de vue constitutionnel est bien peu dire, selon moi, mais, dans le contexte de nos coutumes et de celles d'autres régimes parlementaires, cela suffit également pour justifier toutes les mesures qui s'imposent afin d'annuler l'accord.»

- John Wilson, professeur de sciences politiques à l'Université de Waterloo, témoignant devant le Comité spécial du Sénat sur les accords de l'aéroport Pearson, le 25 septembre 1995.

I. Introduction

Le 4 mai 1995, le Comité spécial du Sénat sur les accords de l'aéroport Pearson a été constitué pour remplir le mandat suivant :

Qu'un comité spécial du Sénat soit créé pour étudier tous les aspects inhérents aux politiques et aux négociations ayant mené aux accords relatifs et au réaménagement et à l'exploitation des aérogares 1 et 2 de l'aéroport international Lester B. Pearson, de même que les circonstances ayant entouré l'annulation des accords en question, ainsi qu'à faire rapport à ce sujet. [*Compte rendu des débats du Sénat*, 4 mai 1995, 1590-92]

Dans l'exécution de ce mandat, le comité a entendu plus de 65 témoins et examiné des milliers de pages de documents. Ces témoignages et, en particulier, les éléments de preuve que constituaient les documents connexes, démontraient, de façon concluante, que la transaction touchant l'aéroport Pearson ne servait pas les meilleurs intérêts du pays tant par ses conditions mêmes qu'à cause du processus qui a mené à sa conclusion.

Dès le départ, le réaménagement des aérogares 1 et 2 de l'aéroport Pearson a été poussé par des promoteurs privés, en particulier par Paxport Inc., un consortium dirigé par M. Don Matthews, et par son fils, M. Jack Matthews.¹ Ni Don Matthews ni son fils n'avait quelque expérience que ce soit dans l'aménagement ou la gestion des aéroports. M. Jack Matthews a admis ouvertement que la première question qu'on lui posait au cours de réunions était ce qu'il venait faire dans le domaine aéroportuaire. Et il ne pouvait que répondre qu'il avait essayé sans succès d'obtenir les contrats de l'aérogare 3.²

Les Matthews, père et fils, ont embauché M. Ray Hession, ancien fonctionnaire de haut rang, à titre de président de Paxport. Dans ce qui deviendra sans doute un cas type de lobbying dans les cours sur les relations entre le gouvernement et l'entreprise, M. Hession a entrepris, d'abord, de persuader les politiciens, les gens d'affaires et les fonctionnaires de la nécessité de procéder immédiatement au réaménagement des aérogares 1 et 2, puis de présenter Paxport comme étant l'entreprise la mieux placée pour le faire.

M. Hession a réussi : la proposition de Paxport a été retenue par le gouvernement pour les travaux de réaménagement même si tout le monde, jusqu'au Premier ministre, savait

¹ Plusieurs témoins se sont exprimés en termes très éloquents sur la gravité de la situation à l'aéroport Pearson. Toutefois, rien n'indique qu'il était nécessaire ni souhaitable de régler ces problèmes autrement qu'en appliquant la politique générale du gouvernement qui consiste à confier à des administrations aéroportuaires locales le soin d'aménager et de gérer les aéroports, jusqu'à ce que M. Hession fasse campagne pour montrer l'urgence de la situation.

² Témoignage de M. Jack Matthews, *Délibérations du Comité spécial du Sénat sur les accords de l'aéroport Pearson*, ci-après appelées les «Délibérations du Comité», le jeudi 21 septembre 1995, fascicule n° 22, 22:130.

que Paxport pourrait très bien s'apercevoir dans quelques semaines que sa proposition n'était pas réalisable vu la conjoncture dans l'aviation commerciale.³ C'est effectivement ce qui est arrivé. Paxport n'a pas pu financer le projet.

Dans les jours qui ont suivi le choix de sa proposition, ce qui l'autorisait à négocier un contrat pour le réaménagement des aérogares 1 et 2, Paxport discutait d'une fusion possible avec son seul concurrent, l'Airport Terminals Development Group.⁴ Seulement cinq semaines plus tard, la fusion se faisait. Le sénateur Finlay MacDonald, président du Comité du Sénat sur les accords de l'aéroport Pearson, a exprimé sa surprise devant ce qu'il a appelé «la brièveté presque choquante de l'intervalle entre la victoire de Paxport et la fusion».⁵

L'enquête sur les accords de l'aéroport Pearson a révélé au public comment le gouvernement fonctionnait sous la direction du très honorable Brian Mulroney. Les lobbyistes, pour reprendre les mots d'un journaliste qui a assisté à de nombreuses audiences, «fourmillaient» aux échelons supérieurs du gouvernement dans leur empressement à obtenir le contrat pour leur client.⁶ Le Comité a appris qu'il «n'était pas [...] inhabituel» qu'une entreprise comme Paxport se fasse faire un compte rendu des réunions des comités du Cabinet par le personnel politique supérieur des ministres⁷ — il en a d'ailleurs eu la preuve sous la forme d'un rapport soumis par un lobbyiste au président de Paxport et qui donnait un «compte rendu détaillé» d'une réunion du Comité des priorités et de la planification du Cabinet.

Le Comité a appris comment le Premier ministre du Canada, après avoir été pressenti au cours d'une réception mondaine, avait demandé au greffier du Conseil privé, le plus haut fonctionnaire de l'État, d'essayer de s'arranger «pour que chacun puisse avoir sa part du gâteau».⁸

³ Note de M. Glen Shortliffe, greffier du Conseil privé au Premier ministre, en date du 4 décembre 1992, doc. du Comité 002184.

⁴ L'Airport Terminals Development Group (ATDG) qui faisait concurrence à Paxport à l'époque, était un consortium contrôlé par le groupe Claridge, un groupe d'entreprises comprenant Claridge Properties Ltd., Claridge Holdings Inc. et d'autres, contrôlés, directement ou indirectement, par Charles Bronfman. Par souci de concision, nous désignons ces entreprises sous le nom de «Claridge» comme nous l'avons fait au cours de nos délibérations. (À un moment donné, l'ATDG est sorti de la scène, et la fusion finale s'est faite entre Paxport et le groupe Claridge.)

⁵ *Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:63.

⁶ Murray Campbell, «Les lobbyistes pour le contrat Pearson avaient des listes de politiciens à approcher : quatre entreprises s'étaient dotées des plans de bataille pour faire jouer leur influence», *Globe and Mail*, 24 août 1995, p. A6.

⁷ Témoignage de M. Ray Hession, ancien président de Paxport Inc., *Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:83.

⁸ Témoignage de M. Glen Shortliffe, alors greffier du Conseil privé, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:65. Comme nous le verrons, cela s'est produit avant le début des discussions concernant la fusion.

Le Comité a vu des notes internes de Paxport dans lesquelles on se demandait si ce serait une bonne stratégie de demander au Premier ministre d'ordonner à l'honorable Douglas Lewis, alors ministre des Transports, d'attribuer le contrat de réaménagement à Paxport, de façon unilatérale, sans appel d'offres. Le Comité a entendu des témoignages voulant que des contrats d'une valeur de 2,4 millions de dollars soient attribués à un lobbyiste, ancien membre haut placé du personnel de M. Mulroney, si l'affaire était conclue. Le Comité a aussi entendu parler de campagnes de lobbying ayant pour «cibles» des membres haut placés du Cabinet, leur personnel politique, des fonctionnaires du ministère des Transports, des députés ainsi que des fonctionnaires du Bureau du Conseil privé et du Cabinet du premier ministre. Et le Comité a vu des notes de service internes du gouvernement, antérieures à l'annonce de la proposition retenue dans le cadre de la demande de propositions, où l'on disait que l'affaire était peut-être déjà conclue.⁹

Le Comité a eu sous les yeux des documents prouvant l'existence de multiples ententes particulières et contrats assortis d'un lien de dépendance qui auraient permis aux promoteurs d'ajouter aux profits déjà considérables (taux de rendement de 23,6 p. 100) que leur garantissait le contrat de réaménagement à l'aéroport Pearson. Parmi ces documents se trouvait un contrat qui prévoyait le versement «d'honoraires d'expert-conseil» de 3,5 millions de dollars, sur dix ans, à une entreprise du groupe Matthews, mais où il n'était fait nulle mention des services, de consultation ou autres, à fournir. Le Comité a pris connaissance d'un contrat de 3,15 millions de dollars accordé à la société mère d'un autre membre du consortium pour des services d'expert-conseil, en vue de la gestion, de l'exploitation, de l'aménagement et du réaménagement des aérogares 1 et 2. Le Comité a vu, encore, un contrat de 4 millions de dollars à une autre entreprise du groupe Matthews, à titre d'honoraires de promotion, pour qu'elle essaie d'obtenir d'autres contrats d'aménagement d'aéroports, à l'échelle internationale, au bénéfice du consortium. Même si cela n'avait aucun rapport avec l'aéroport Pearson, la somme aurait apparemment été prélevée sur les recettes de l'exploitation de cet aéroport, comme faisant, en quelque sorte, partie des frais d'exploitation des aérogares.

Le Comité a vu des contrats de gestion de travaux de construction, d'architecture et d'ingénierie, et encore d'autres contrats de gestion, pour ne nommer que ceux-là, qui représentaient des millions de dollars de recettes supplémentaires pour les membres du consortium T1T2. Le Comité a aussi pris connaissance de documents du gouvernement dans lesquels on essayait de rassembler ces contrats, de les appareiller aux bonnes parties contractantes et de les situer dans le dédale des structures organisationnelles de chacun des membres du consortium. Un de ces documents était intitulé, à juste titre, «L'énigme Matthews».¹⁰

⁹ Note de service de M. Bill Cleavelly à six fonctionnaires du Conseil du Trésor, en date du 26 novembre 1992, doc. du Comité 001267.

¹⁰ Doc. du Comité 001109.

Le gouvernement a renoncé à tout droit véritable de superviser ou de limiter ces transactions intéressées. Il s'est également privé de la capacité véritable de se plaindre si le consortium ne respectait pas sa part du contrat. Il ne lui restait, pour seul recours, qu'à s'interposer et à reprendre l'aéroport, une intervention improbable à moins d'un manquement très grave aux conditions du contrat. Le consortium jouissait donc d'une liberté d'action considérable pour contourner les règles — et le bail était de 57 ans.

Les éléments de preuve établissent clairement que le projet de privatisation des aéroports 1 et 2 a été entrepris contre l'avis d'Air Canada, de Canadien International et des autres membres du secteur de l'aviation commerciale du Canada. Une fois le projet lancé, le gouvernement a opté pour un processus qui, l'avait-on prévenu, pourrait donner l'impression que le ministère ne s'était pas engagé à adopter un processus pleinement concurrentiel et ouvert.¹¹ Cela a été fait contre l'avis des fonctionnaires et malgré les réserves exprimées ouvertement au Parlement par le très honorable Jean Chrétien, alors chef de l'opposition officielle, et, en privé, dans la correspondance échangée entre un député conservateur de Mississauga (où l'aéroport est situé) et le ministre des Transports.¹² Alors que les négociations étaient déjà bien avancées, les transporteurs aériens de l'aéroport 1 ont envoyé une dernière pétition au ministre des Transports et à Paxport dans laquelle ils lui demandaient en terminant qui resterait en affaires pour payer pour cette extravagance coûteuse.¹³

L'affaire a été négociée par des fonctionnaires travaillant à une allure folle¹⁴ pour respecter l'échéance imposée par le premier ministre Mulroney qui voulait que l'affaire soit conclue avant qu'il ne quitte ses fonctions en juin 1993.¹⁵ Dans des notes internes du gouvernement, on signalait que cette obligation de faire vite avait donné au consortium l'avantage durant les négociations.¹⁶ En fin de compte, le délai n'a pu être respecté. Les accords ont été finalement signés dans le tumulte de la controverse publique, au beau milieu d'une campagne électorale et sur l'ordre exprès de la première ministre, la très honorable Kim Campbell, qui s'est ainsi, comme l'a dit un des témoins, moquée des convenances comme aucun autre gouvernement ne l'avait fait avant elle.¹⁷

¹¹ Note de service de M. Chern Heed, directeur général de l'aéroport Pearson, à M. Victor Barbeau, en date du 29 octobre 1991, dans laquelle il cite Price Waterhouse, doc. du Comité 000639.

¹² Lettre de M. Don Blenkarn, député de Mississauga-Sud, à l'honorable Jean Corbeil, ministre des Transports, en date du 13 mars 1992, doc. du Comité 000996.

¹³ Lettre de M^{me} Carole Pitre, présidente, sous-comité de l'aéroport 1 du comité des transporteurs aériens, à Paxport Inc., en date du 29 juin 1993, doc. du Comité 001088.

¹⁴ Note de M. Robert Fonberg à M. Michael Francino, ministère des Finances, 17 mai 1993, doc. du Comité 002072.

¹⁵ Témoignage de M. Glen Shortliffe, ancien greffier du Conseil privé, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:74.

¹⁶ Note de M. Robert Fonberg à M. Michael Francino, ministère des Finances, 17 mai 1993, doc. du Comité 002072.

¹⁷ Témoignage de M. John Wilson, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:15.

Le Comité a entendu les témoignages du greffier du Conseil privé et d'un professeur de sciences politiques à l'Université de Waterloo qui lui ont tous deux expliqué que le gouvernement du Canada avait pour principe d'agir avec prudence dès que le Parlement était dissous et qu'une campagne électorale était en cours.¹⁸ En vertu de cette «convention de transition», le gouvernement canadien accepte que la latitude dont il jouit pour prendre des décisions soit «nettement limitée», ces décisions devant porter uniquement sur l'administration des affaires courantes.¹⁹ Ce principe n'a pas été respecté dans le cas des accords de l'aéroport Pearson. Le Comité s'est fait dire que la signature des accords Pearson «était un exercice du pouvoir déplacé du point de vue constitutionnel [qui] suffisait à justifier toutes les mesures qui s'imposaient afin d'annuler l'accord».²⁰

Ces contrats auraient établi un précédent dangereux pour le processus démocratique au Canada, un précédent qui aurait permis à un gouvernement de signer des accords controversés pendant une campagne électorale, même devant l'évidence que le gouvernement est sur le point de perdre le pouvoir. Ces contrats auraient lié le gouvernement canadien par un bail de 57 ans dont les dispositions, du point de vue de la saine gestion des affaires, ne favorisaient pas le meilleur intérêt du pays. De plus, la privatisation de l'aéroport canadien le plus important, le plus achalandé et le plus rentable dérogeait à la politique officielle du gouvernement et à la politique qui était appliquée dans tous les grands aéroports du Canada.

Y a-t-il eu manœuvres politiques? Il sera peut-être impossible de le prouver hors de tout doute. Les règles limitant la divulgation des documents du Cabinet ou des avis donnés aux ministres et la réticence compréhensible des fonctionnaires à pointer publiquement du doigt leurs anciens dirigeants politiques ou à critiquer une transaction qu'ils ont eux-mêmes négociée, tout cela concourt à embrouiller une bonne partie de cette transaction déjà bien trouble, que le Comité n'a pu pénétrer. Par ailleurs, les documents communiqués au Comité révèlent que le Premier ministre, les membres de son Cabinet et leurs proches conseillers sont intervenus dans ce dossier bien plus que l'on aurait pu s'y attendre dans une transaction commerciale normale.

Pour toutes ces raisons, nous appuyons la décision prise par le gouvernement canadien d'annuler les accords de l'aéroport Pearson.

¹⁸ Témoignage de Jocelyne Bourgon, *Délibérations du Comité*, le mardi 14 septembre 1995, fascicule n° 19, 19:57, 59; témoignage de M. John Wilson, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:13.

¹⁹ *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:9.

²⁰ *Ibid.*, 24:16.

I. CONTEXTE : LA POLITIQUE

Le gouvernement dirigé par le très honorable Brian Mulroney avait, au départ, une politique claire et cohérente sur l'aménagement des 150 aéroports alors gérés par le gouvernement fédéral et qui comprenaient tous les grands aéroports du pays. Austin Douglas, ancien directeur exécutif adjoint du Groupe des administrations aéroportuaires de Transports Canada, maintenant à la retraite, nous a brossé, au cours de son témoignage, un tableau de l'évolution de cette politique, qui s'est amorcée avec le rapport du Groupe de travail Mazankowski en 1986.

Le Groupe de travail, qui était dirigé par l'honorable Don Mazankowski, comprenait des représentants des secteurs public et privé. Il a envisagé quatre solutions : la solution secteur privé, la solution société d'État, la solution administration aéroportuaire locale (AAL) et la solution appelée modèle d'administration aéroportuaire de Transports Canada, qui était essentiellement une version plus développée et plus commercialisable de ce qui existait à l'époque. Le Groupe de travail a retenu la solution de l'administration aéroportuaire locale, sans même mentionner celle du secteur privé dans ses recommandations. Comme nous l'a indiqué M. Douglas :

«Les conclusions du rapport sont que [la solution secteur privé] n'était pas nécessairement la meilleure façon, la façon la plus judicieuse de tenir compte de tous les publics visés pour décider ce qui permettait le mieux de stimuler l'expansion économique locale et de répondre aux besoins de tous ceux qui risquaient d'être touchés par l'aéroport.» [*Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:28-29]

Le gouvernement Mulroney a rapidement pris des mesures pour appliquer cette politique. Au printemps 1987, il a publié un document intitulé, *Une nouvelle politique relative au futur cadre de gestion des aéroports canadiens*.²¹ Comme M. Douglas nous l'a indiqué, la solution secteur privé ne figurait pas au nombre des solutions acceptables dans cet énoncé de politique, lequel prévoyait par contre «qu'il faudrait encourager par tous les moyens possibles la participation du secteur privé à l'aménagement et à l'exploitation des aéroports». [*Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:30] (Le contrat avec le secteur privé pour la construction et l'exploitation de l'aérogare 3 avait été conclu avant que le gouvernement n'élabore sa politique en 1987. Voir : *Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:44)

M. Nick Mulder, sous-ministre des Transports, a affirmé que : «Ont découlé [de l'énoncé de politique de 1987] des politiques, que vous connaissez bien, afin de créer des

²¹ Ce document figurait à l'onglet G du cahier d'information préparé par l'équipe des attachés de recherche de la Bibliothèque du Parlement à l'intention des membres du Comité.

administrations aéroportuaires locales. Quatre ont été négociées au début des années 90, et l'on a même tenté de mettre sur pied une telle structure à Toronto». [*Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:15]

Au début d'avril 1992, des accords ont été signés en vue de céder les aéroports internationaux de Vancouver, de Montréal, d'Edmonton et de Calgary à des administrations aéroportuaires locales. [Voir le Communiqué de Transports Canada, n° 56-59/92, doc. du Comité 00015]

M. Glen Shortliffe, ancien greffier du Conseil privé (1992-1994) et sous-ministre des Transports (mai 1988 - octobre 1990), a expliqué, dans son témoignage, que la politique adoptée dans le cas de Toronto constituait une exception par rapport à la politique appliquée ailleurs par le gouvernement Mulroney :

«S'agissait-il d'un écart par rapport à la politique officielle relative aux AAL établie en 1987? Évidemment. S'agissait-il d'une décision de politique délibérée du gouvernement? Oui. Et a-t-elle été prise pour régler ce qu'on croyait être une crise à l'aéroport Pearson? Oui.» [*Délibérations du Comité*, le jeudi 13 juillet 1995, fascicule n° 4, 4:70; c'est nous qui soulignons]

La question de savoir si l'administration aéroportuaire locale de Toronto était en mesure de prendre en charge l'aéroport Pearson a été chaudement débattue au cours des délibérations du Comité. La Greater Toronto Regional Airports Authority (GTRAA) a affirmé qu'elle était fin prête à assumer la gestion de l'aéroport Pearson, et qu'elle l'était même davantage que toutes les autres administrations aéroportuaires locales qui avaient été agréées par le gouvernement Mulroney dans les autres grands aéroports canadiens. La question sera examinée plus loin.

L'autre question est de savoir dans quelle mesure il y avait une crise à l'aéroport Pearson et dans quelle mesure on s'est servi de cette présumée crise pour contourner l'option de l'administration aéroportuaire locale et adopter une «solution» extraordinaire, l'option du secteur privé.

Contexte : Y avait-il une crise à l'aéroport Pearson?

M. Shortliffe et l'honorable Doug Lewis (ministre des Transports, février 1990 - avril 1991) nous ont affirmé tous les deux qu'il existait bel et bien une crise. M. Lewis a dit qu'il se passait rarement une journée sans qu'on lui signale qu'il fallait «régler le problème à Pearson». [*Délibérations du Comité*, le jeudi 13 juillet 1995, fascicule n° 4, 4:4-5]

M. Shortliffe nous a dit à peu près la même chose en ajoutant : «L'aéroport Pearson était un vrai gâchis. Une honte. Et pis encore, il ne fonctionnait pas». [*Délibérations du Comité*, le jeudi 13 juillet 1995, fascicule n° 4, 4:64]

Il a expliqué à notre Comité qu'à la fin des années 1980 il y avait une pénurie de contrôleurs aériens, les pistes étaient insuffisantes, et les aérogares n'allaient pas pouvoir accueillir le trafic voyageurs que l'on prévoyait au cours des années à venir. Il a décrit l'aérogare 1 comme «un vieux hangar qui vient de s'écrouler» et s'est plaint qu'«à l'évidence, il n'y avait pas, suffisamment de portes à l'aérogare 2». [*Délibérations du Comité*, le jeudi 13 juillet 1995, fascicule n° 4, 4:65]

En 1989-1990, il y avait des problèmes à l'aéroport Pearson, personne n'a prétendu le contraire. La controverse tient à la nature des problèmes que le gouvernement a décidé de régler et à la façon dont il s'y est pris. **Comme nous le verrons, la transaction finale en cause dans cette enquête ne réglait pas la pénurie de contrôleurs aériens, ni l'insuffisance de pistes. Aucune construction ne se serait faite à l'aérogare 1 avant 1997, au plus tôt. Les travaux auraient commencé avant cela à l'aérogare 2, mais ce n'était pas pour ajouter des portes.**

En outre, la situation à l'aéroport Pearson a changé rapidement avec la récession. Comme l'a signé M. Gardner Church, ancien sous-ministre de l'Ontario responsable du Grand Toronto, «la demande à l'égard d'installations aéroportuaires avait chuté de façon marquée et l'engorgement connu en 1989 ne posait plus de problème». Le projet a toutefois continué sur la foi de données «extraordinaires» quant à la demande à laquelle les installations auraient à répondre. [*Délibérations du Comité*, le mardi 25 juillet 1995, fascicule n° 5, 5:21]

M. Church a par la suite apporté des précisions, expliquant que les données «extraordinaires» sur lesquelles s'était fondée la décision de confier au secteur privé l'aménagement des aérogares avaient été extrapolées de la croissance fantastique qu'avait connue Toronto de 1986 à 1989 – «la période de croissance la plus extraordinaire de l'histoire du pays et, de loin, la période de croissance la plus extraordinaire de l'histoire de Toronto et du secteur de l'aviation à Toronto». [*Délibérations du Comité*, le mardi 25 juillet 1995, fascicule n° 5, 5:22] En réalité, il a été établi, de façon incontestable, que cette courbe de croissance ne s'est pas maintenue.

Le 16 novembre 1992, soit trois semaines avant que le gouvernement n'annonce que la proposition de Paxport avait été retenue comme «meilleure proposition globale» pour le réaménagement des aérogares, Glen Shortliffe, alors greffier du Conseil privé, avait écrit au premier ministre Mulroney en ces termes :

«Le ministère des Transports a cerné un certain nombre de questions sur lesquelles il faudrait se pencher avant d'aller de l'avant :

- la récession dure plus longtemps que prévu, et le trafic pourrait baisser en raison de la conjoncture dans le secteur de l'aviation commerciale; l'agrandissement des aéroports peut donc être retardé de deux ou trois ans. **Il n'y a pas lieu d'entreprendre les travaux de construction avant 1996;**
- on s'attendait au départ à ce que les travaux de construction puissent commencer l'année prochaine. Le ministère des Transports estime maintenant qu'ils ne pourront commencer avant 1994 au plus tôt, puisqu'il faudra au moins douze mois pour négocier le bail. Paxport devra négocier de nouveaux baux avec les transporteurs et d'autres locataires des aéroports et régler la question du financement avant la signature du bail;
- les frais des transporteurs doubleraient au cours de la première année, pour s'établir à 60 millions de dollars, et quadrupleraient en dix ans. **Air Canada a demandé que le réaménagement soit reporté.**
- une administration aéroportuaire locale (AAL) pourrait être constituée pour l'aéroport Pearson. Les cinq présidents régionaux, dirigés par l'administration du Grand Toronto, ont signifié à M. Corbeil leur intention de mettre sur pied une administration aéroportuaire locale. Cette dernière assumerait la responsabilité du bail établi pour les aéroports 1 et 2. **La province pourrait faire pression pour que le projet soit reporté jusqu'à ce qu'une AAL soit établie.»** [Note de Glen Shortliffe au premier ministre, en date du 16 novembre 1992, doc. du comité 002188; c'est nous qui soulignons]

Il ressort clairement des documents que l'urgence de «régler le problème» à Pearson – la «crise à l'aéroport Pearson» – s'était dissipée au moment où les propositions ont été examinées. Air Canada, le principal locataire à l'aéroport 2, préconisait le report des travaux de réaménagement; les coûts imposés au public voyageurs auraient quadruplé pour payer ce réaménagement; le gouvernement de l'Ontario voulait attendre qu'une administration aéroportuaire locale soit établie à l'aéroport Pearson. En dépit de tout cela, le gouvernement a montré un entêtement tenace à pousser jusqu'au bout cette solution du secteur privé pour régler un problème qui n'existait pas. On peut se demander si cette détermination aurait été aussi inébranlable si le bénéficiaire du contrat avait été une administration aéroportuaire locale sans but lucratif, et non un groupe du secteur privé dont les membres avaient des chances d'empocher des millions de dollars.

L'administration aéroportuaire locale de Toronto

L'ancien ministre des Transports, Douglas Lewis, nous a expliqué qu'il n'avait pas cédé l'aéroport Pearson à une administration aéroportuaire locale parce que celle de Toronto ne constituait pas une option viable. [*Délibérations du Comité*, le jeudi 13 juillet 1995, fascicule n° 4, 4:9]

Or, cette affirmation contredit sensiblement celle des membres de la Greater Toronto Regional Airports Authority qui ont comparu devant le Comité. Selon eux, M. Lewis a persisté à leur imposer des exigences beaucoup plus grandes que celles qui avaient été imposées à toutes les autres administrations aéroportuaires locales au Canada, comme en témoigne M. Gardner Church :

«Le gouvernement fédéral exigeait le soutien des municipalités. À Vancouver et à Montréal, il avait exigé le soutien de quelques municipalités. Pour des raisons sur lesquelles on pourrait conjecturer, il a exigé par deux fois l'unanimité absolue de la communauté de Toronto. Or, obtenir l'unanimité absolue de 35 municipalités sur quelque point que ce soit représente un effort titanesque et, par deux fois, nous avons réussi.» [*Délibérations du Comité*, le mardi 25 juillet 1995, fascicule n° 5, 5:16]

Lorsque le sénateur John Bryden lui a demandé de faire la lumière sur les raisons pour lesquelles les critères imposés à la GTRAA étaient plus exigeants que ceux auxquels les autres administrations aéroportuaires locales avaient dû satisfaire, Gary Harrema, président du conseil régional de Durham, avait eu cette réponse :

«Non, monsieur, je ne saurais le faire. Nous avons posé la question. Et M. Lewis a été très ferme là-dessus, il a dit qu'il nous fallait une décision de chacun de nos conseils. [...]. M. Lewis nous a dit que la privatisation était la seule façon dont il voulait procéder et que si nous voulions intervenir à un moment donné, nous n'étions pas exclus tout à fait de la démarche, mais il ne nous invitait certainement pas à aller de l'avant, il ne disait pas qu'il accepterait une AAL [...]. Nous avons rencontré M. Corbeil plus tard, en 1992, encore une fois, et c'était semblable, la réunion avait été quelque peu différente, mais les réactions avaient été semblables.» [*Délibérations du Comité*, le mardi 25 juillet 1995, fascicule n° 5, 5:18]

Durant ce temps, Paxport pressait Transports Canada d'imposer un moratoire pour suspendre pendant trois ans la création de nouvelles AAL. Lorsque le Greater Toronto Area Airport Study Committee a recommandé qu'aucune mesure ne soit prise relativement à la privatisation des aérogares à l'aéroport international Lester B. Pearson afin qu'il puisse discuter de la privatisation dans le contexte de la mise en place d'une administration aéroportuaire locale, le président de Paxport s'est plaint auprès de M^{me} Huguette Labelle, sous-ministre des Transports, de ce qu'il a appelé «l'obstruction locale» disant qu'il était

difficile d'imaginer les représentants locaux et municipaux de la GTA faisant passer l'intérêt national avant leurs propres intérêts locaux». [Voir la lettre de M. Ray Hession à M^{me} Huguette Labelle, en date du 26 novembre 1990, doc. du comité 001181, et le rapport global de la mairesse de Mississauga, Hazel McCallion, au président et aux «membres du Comité de l'administration et des finances, en date du 17 octobre 1990, doc. du Comité 001181]

Les documents examinés par le Comité confirment l'affirmation de la GTRAA voulant qu'elle n'ait pas été soumise aux mêmes critères de reconnaissance que les autres AAL. Le 6 mai 1993, l'honorable Jean Corbeil a écrit à Gerry Meinzer, alors président intérimaire de la Greater Toronto Regional Airports Authority, pour lui dire qu'il rejetait sa demande de reconnaissance officielle et ne l'autorisait pas à entreprendre des pourparlers en vue de la cession de l'aéroport Pearson à la GTRAA. [Doc. du Comité 000549] M. Corbeil donnait comme raison le fait que l'appui de certains conseils était assorti de quelques conditions.

Pourtant, on trouve sur la copie de la lettre conservée au dossier une note manuscrite, apparemment rédigée et parafée par M.E. Farquhar, directeur général des cessions d'aéroports à Transports Canada, qui dit ceci :

«Malgré les observations qui précèdent, l'AAL de Toronto semblerait déjà remplir les conditions préalables en vue de sa reconnaissance par le gouvernement, conditions qui cadrent avec les critères appliqués dans le cas des quatre premières AAL.» [C'est nous qui soulignons]

Au cours des audiences, on a fait grand cas de la question de l'aéroport de l'Île de Toronto et du fait qu'une région, celle de Peel, insistait pour que cet aéroport soit aussi cédé à la GTRAA. Il ressort toutefois clairement des témoignages que cela est une preuve supplémentaire que l'AAL de Toronto n'a pas été soumise aux mêmes critères qui avaient été appliqués ailleurs au Canada. Ainsi, le gouvernement a cédé l'un des deux aéroports d'Edmonton à une administration aéroportuaire locale laissant l'autre sous la responsabilité de la ville d'Edmonton. M. Michael Farquhar, qui était responsable de la négociation des cessions d'aéroports aux AAL à Transports Canada, a affirmé ceci en ce qui concerne la décision de procéder à la cession même si l'AAL souhaitait négocier la cession simultanée des deux aéroports :

«Il est probablement plus logique du point de vue de l'administration aéroportuaire de prendre d'abord en main le principal aéroport et de démontrer qu'on est capable de l'exploiter plutôt que d'essayer de tout faire en même temps [...]. Le ministre connaissait très bien le dossier d'Edmonton.» [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:50]

M. Gerry Meinzer a affirmé que M. Farquhar avait informé les présidents régionaux, en 1992, qu'ils avaient satisfait à tous les critères de reconnaissance. [*Délibérations du*

Comité, le mardi 25 juillet 1995, fascicule n° 5, 5:46] M. Farquhar a lui-même dit clairement qu'il existait à Toronto, en juin 1992, un organisme avec lequel les fonctionnaires du ministère des Transports pouvaient discuter des cessions d'aéroports. [*Délibérations du Comité*, le mardi 25 juillet 1995, fascicule n° 5, 5:79]

Le 18 juin 1993, M. Farquhar avait préparé une note d'information à l'intention du ministre dans laquelle il lui faisait la recommandation suivante : «Même si la municipalité régionale de Peel confirme à nouveau ses résolutions antérieures au sujet de la cession proposée de l'aéroport de l'Île de Toronto, il conviendrait encore d'appuyer la GTRAA, compte tenu de notre expérience récente à Edmonton». [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:49]

De fait, le 12 juillet 1993, le gouvernement de l'Ontario reconnaissait officiellement la Greater Toronto Regional Airports Authority «en vue de la négociation officielle de la cession d'aéroports avec Transports Canada». [Doc. du Comité 00069] Le souhait de la province de voir l'aéroport Pearson cédé de préférence à une administration aéroportuaire locale est exprimé sans détour dans la correspondance adressée au ministre fédéral des Transports, notamment dans une lettre adressée à l'honorable Jean Corbeil par le ministre des Transports de l'Ontario le 30 juillet 1991. [Doc. du Comité 000565]

Il est curieux que le ministre des Transports ait insisté pour que la GTRAA démontre qu'elle bénéficiait de l'appui inconditionnel de toutes les municipalités, alors qu'aucun appui semblable n'avait jamais été demandé relativement à la privatisation. En fait, il n'a été accordé absolument aucun poids à l'opposition pourtant inflexible et non équivoque des municipalités à «la solution secteur privé» que proposait le gouvernement. **Une AAL publique devait obtenir un appui public unanime, tandis que l'on pouvait faire avancer à grands pas la privatisation sans égard à la vigueur de l'opposition publique.**

Le 18 octobre 1993, le greffier adjoint de la ville de Toronto a écrit à la très honorable Kim Campbell, qui était alors première ministre du Canada, pour l'informer d'une résolution qui avait été adoptée par le conseil municipal de Toronto. Cette résolution se lisait comme suit :

«Attendu que le gouvernement du Canada a annoncé que la proposition de Paxport avait été retenue en vue de la privatisation des aéroports 1 et 2 de l'Aéroport international Lester B. Pearson;

[...]

Attendu que le gouvernement du Canada semble s'être empressé de conclure une transaction qui ne paraît pas servir les meilleurs intérêts des citoyens de Toronto;

Il est donc résolu d'informer le gouvernement du Canada de l'opposition de la ville de Toronto à la privatisation des aéroports 1 et 2 de l'Aéroport international Lester B. Pearson dans sa forme actuelle, et de demander au gouvernement du Canada de réexaminer et d'annuler sa décision, afin qu'il soit possible de poursuivre l'étude du dossier.» [Lettre du greffier adjoint de la ville de Toronto à la très honorable Kim Campbell, première ministre du Canada, le 18 octobre 1993, doc. du Comité 002086]

Les éléments de preuve révèlent que la façon dont on a procédé dans le cas de Toronto dérogeait à la politique établie par le gouvernement relativement aux aéroports internationaux situés dans des grands centres partout au Canada. Ce qui s'est fait à Toronto était justifié, d'après ce qu'on nous a dit, par la nécessité urgente de «régler le problème» à l'aéroport Pearson et de le régler rapidement : la rapidité était essentielle. Pourtant, l'option qui consistait à confier au secteur privé le réaménagement des aéroports 1 et 2 n'était pas plus «rapide» que l'option qui consistait à constituer une AAL.

Mais plus important encore est le fait qu'au moment où le gouvernement a lancé sa demande de propositions il n'était pas urgent de régler le problème à l'aéroport Pearson. En effet, à cause de la récession, l'aéroport Pearson était loin de fonctionner à plein régime. Le gouvernement Mulroney aurait pu rester fidèle à sa politique concernant les administrations aéroportuaires locales, comme il l'avait fait dans chacun des autres grands aéroports du pays.

Toutefois, l'option de l'administration aéroportuaire locale a été rejetée — non seulement rejetée, mais, d'après les témoignages, délibérément entravée — afin de s'assurer que la privatisation serait la solution au problème. Le fait que le problème ait existé encore ou non n'avait aucune importance.

II. CONTEXTE : L'EXPÉRIENCE DE L'AÉROGARE 3

Quand il s'est penché sur la méthode qui avait été utilisée pour solliciter, puis évaluer, des propositions en vue du réaménagement des aéroports 1 et 2, le Comité avait l'avantage de pouvoir comparer avec ce qui s'était produit dans le cas de l'aéroport 3. Or, contrairement au réaménagement des aéroports 1 et 2, la décision d'inviter le secteur privé à concevoir, à construire et à exploiter l'aéroport 3 a été prise en septembre 1986, soit avant l'adoption, en 1987, du cadre de gestion des aéroports, qui préconisait le recours aux AAL. [*Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:44]

En septembre 1986, le ministre des Transports a sollicité des «déclarations d'intérêt» de la part du secteur privé pour le 19 novembre 1986 c'est-à-dire trois mois plus tard. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:27] Ed Warrick, ancien directeur général du projet, Grands Projets de l'État, aéroport Pearson, maintenant à la retraite, a affirmé que huit déclarations d'intérêt avaient été reçues. La demande de propositions est sortie le 18 décembre 1986. L'échéance pour la présentation des propositions

était fixée au 1^{er} mai 1987, soit environ quatre mois plus tard. Il s'est donc écoulé quelque sept mois entre la sollicitation de déclarations d'intérêt et la date limite de présentation des propositions. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:27] Quatre propositions ont été soumises, dont celles de l'Airport Development Corporation et de Falcon Star. Le groupe Matthews constituait le principal élément de Falcon Star. [*Ibid.*]

Même s'il ne faisait pas partie de l'Airport Development Corporation à l'origine, le groupe Claridge en est devenu un actionnaire minoritaire après la signature du contrat. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:30-31] Peter Coughlin, président de Claridge Properties Ltd., a été très clair quant au motif qui avait amené le groupe Claridge à acquérir un bloc de contrôle à l'aérogare 3 : «Notre décision était motivée, dans une large mesure, par l'intention qu'avait fait connaître le gouvernement de privatiser les aérogares 1 et 2. Nous ne voulions pas avoir seulement une part du gâteau. Pour nous, l'exploitation des trois aérogares était nécessaire afin de diversifier nos risques dans les trois aérogares, de produire d'importants effets de synergie au chapitre du financement et de l'exploitation et d'accroître notre rendement». [*Délibérations du Comité*, le mardi 12 septembre 1995, fascicule n° 17, 17:12]

Les propositions ont été évaluées en mai 1987. M. Warrick a affirmé que **la capacité de financement était un des facteurs pris en considération**. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:28] La viabilité financière de chacune des propositions comptait pour environ 40 p. 100 des points accordés. [*Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:74]

M. Warrick a expliqué au Comité que l'évaluation avait été faite par des hauts fonctionnaires de Transports Canada avec l'appui de divers autres groupes du gouvernement qui pouvaient leur donner des avis sur la sécurité, les douanes, l'immigration et le dédouanement. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule 3, 3:28]

Le 22 juin 1987, le gouvernement a fait connaître son «promoteur privilégié»; il s'agissait de l'Airport Development Corporation. M. Warrick a affirmé avoir eu connaissance de réactions négatives à ce choix de la part de soumissionnaires non retenus. Le groupe Matthews en particulier «était mécontent de ce choix et a exprimé son insatisfaction». [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:28-29]

En avril 1988, le Conseil du Trésor a approuvé le bail définitif; c'était 19 mois après la demande de déclarations d'intérêt. L'aérogare 3 a ouvert ses portes le 21 février 1991. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:29]

Le Comité s'est fait dire que la méthode employée dans le cas de l'aérogare 3 était devenue en quelque sorte un modèle à suivre pour ce qui concernait de telles demandes de propositions publiques. Selon Al Clayton, directeur exécutif du Bureau des biens

immobiliers et du matériel du Conseil du Trésor, le Bureau se servait de l'aérogare 3 comme modèle, pas nécessairement de la façon de faire pour les aéroports, mais de la façon de faire pour ce genre d'appel d'offres. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:37]

III. LE PROCESSUS : AÉROGARES 1 ET 2

Circonstances qui ont mené au lancement de la demande de propositions

Le 18 août 1989, l'honorable Benoit Bouchard, ministre des Transports, et M^{me} Shirley Martin, ministre d'État aux Transports, ont annoncé leur stratégie pour assurer l'avenir du secteur de l'aviation dans le sud de l'Ontario. Cette stratégie comprenait des mesures pour utiliser de façon optimale les installations de l'aéroport Pearson. [Communiqué du ministre n° 98/89, le 18 août 1989] Parmi les mesures à court terme (à mettre en oeuvre dans un délai de deux ans), on accordait la plus haute priorité à la rénovation des aérogares 1 et 2 de l'aéroport international Pearson, qui allait permettre, avec l'achèvement de la construction de la nouvelle aérogare 3 au milieu de 1990, d'offrir au public voyageurs trois aérogares efficaces et confortables. À court terme également, on prévoyait construire deux nouvelles pistes à l'aéroport Pearson, recruter des contrôleurs aériens et agrandir l'aéroport d'Hamilton, afin qu'il puisse accueillir les vols déroutés de Pearson.

Comme on le verra, l'accord négocié avec le T1T2 Limited Partnership (le consortium auquel la fusion Paxport-Claridge a donné naissance) aurait empêché l'agrandissement de l'aéroport d'Hamilton pour qu'il serve de déversoir à l'aéroport Pearson : les promoteurs ont en effet réussi à convaincre le gouvernement de leur offrir une garantie concernant le déroutement des voyageurs, par laquelle il s'engageait expressément à ne pas réduire le trafic voyageurs de l'aéroport Pearson tant que ce trafic n'avait pas atteint un certain niveau.

Les documents fournis au Comité révèlent que, même avant la publication du communiqué, le groupe Matthews, dont la soumission n'avait pas été retenue pour les travaux de construction de l'aérogare 3, se positionnait en vue d'obtenir les contrats de réaménagement des aérogares 1 et 2 à l'aéroport Pearson. Dès le mois de mai 1989, M. Ray Hession, qui allait devenir président de Paxport Inc., rencontrait les sous-ministres et les sous-ministres adjoints des ministères des Finances et des Transports pour les convaincre de confier au secteur privé le réaménagement des deux aérogares et de choisir Paxport comme le « promoteur privilégié ». [Voir par exemple la lettre M. Hession à M. Glen Shortliffe, sous-ministre des Transports, en date du 15 août 1989, doc. du Comité 5700-1.35/P1-13, 1-1 #0157]

L'examen des critères préconisés par Paxport pour l'évaluation des promoteurs révèle une chose intéressante : ils accordent en effet une place prépondérante aux revenus dont

bénéficiera l'État, mais ne font curieusement aucune mention du financement de la proposition, y compris la solidité du promoteur. De plus, bien que l'on souligne l'amélioration «qualitative» de certains services offerts au public voyageurs, on ne mentionne aucun critère relatif à la hausse proportionnelle des coûts imposés à ce public. Les critères appliqués par le gouvernement pour l'évaluation des propositions en vue du réaménagement des aéroports 1 et 2 ressemblent beaucoup à ceux que préconisait Paxport — et diffèrent largement de ceux qui avaient servi dans le cas de l'aéroport 3. [Doc. du Comité 5700-1.35/P1-13, 1-1 #0157]

En septembre 1989, Paxport a présenté une proposition spontanée en vue du réaménagement des deux aéroports. Des propositions semblables sont ensuite venues de Canadian Airports Ltd. (dont faisait partie la British Airport Authority, qui avait une vaste expérience du réaménagement et de l'exploitation des aéroports) et de l'Airport Development Corporation (le promoteur de l'aéroport 3 dont Claridge était à l'époque un actionnaire minoritaire). Le 1^{er} juin 1990, Paxport et Air Canada s'associaient pour présenter une proposition, décrite par le sénateur Jessiman comme «un plan de Paxport pour l'intégration des aéroports 1 et 2». [*Délibérations du Comité*, le mardi 15 juin, fascicule n° 11, 11:48]

Pendant tout ce temps, Paxport plaidait sa cause auprès de députés, de ministres, du personnel politique des ministres et de fonctionnaires. À cette fin, M. Hession avait embauché une équipe de lobbyistes dirigée par William Neville et dont faisaient partie John Legate et Hugh Riopelle. Ils ont rencontré personnellement «les représentants des ministères des Transports, des Finances, de la Justice, de l'Industrie et du Commerce international, du Conseil du Trésor et du Bureau du Conseil privé, [...] les attachés politiques des ministères des Transports, de l'Industrie, des Finances, du Conseil du Trésor, du Bureau du Conseil privé [...], les adjoints politiques du vice-premier ministre et du premier ministre [et] plusieurs ministres, notamment ceux des Transports, des Finances, de l'Industrie et du Conseil du Trésor». [*Procès-verbaux et témoignages du Comité permanent des transports de la Chambre des communes*, le 26 mai 1994, 7:8]

L'examen des agendas de M. Hession, dont il a remis copie au Comité, confirme la véracité de ce témoignage. Y sont inscrits de nombreux déjeuners, dîners, réunions et parties de golf avec des ministres, non seulement l'honorable Jean Corbeil alors qu'il était ministre des Transports, mais également l'honorable Harvie André et l'honorable Otto Jelinek, avec des membres haut placés du personnel politique de certains ministres, dont l'honorable Doug Lewis, l'honorable Jean Corbeil et l'honorable Don Mazankowski (tant comme ministre des Transports que comme ministre des Finances), ainsi qu'avec les chefs de cabinet du premier ministre, dont une réunion, le 22 juillet 1991, avec M. Norman Spector, chef de cabinet de M. Brian Mulroney, et une autre, le 20 juillet 1993, avec M^{me} Jodi White, chef de cabinet de M^{me} Kim Campbell.

M. Hession a également rencontré d'autres personnes réputées proches du premier ministre Mulroney, dont l'honorable Guy Charbonneau (nommé président du Sénat par M. Mulroney en 1984) et deux amis proches de M. Mulroney depuis qu'il était étudiant, M. Sam Wakem et M. Fred Doucet. (Ce dernier s'est plus tard enregistré comme lobbyiste pour le compte de Paxport.) Il a également eu de nombreuses rencontres avec des fonctionnaires, non seulement ceux de Transports Canada qui étaient directement responsables du dossier de l'aéroport Pearson, mais d'autres, au Bureau du Conseil privé, surtout M. Glen Shortliffe, greffier du Conseil privé.

Ce démarchage s'est poursuivi pendant toute la période qui nous intéresse, c'est-à-dire de 1989 à 1993. Et, comme nous le verrons ci-dessous, il s'est avéré profitable pour Paxport.

Nous n'avons rien contre les tentatives légitimes faites par Paxport ou d'autres groupes pour tenter d'influencer les décisions du gouvernement; nous en avons contre le fait qu'elles aient porté fruit, que des membres du gouvernement aient été disposés à modifier la politique officielle et à établir de nouvelles règles à la suite de ces démarches, souvent au mépris des avis éclairés de leurs fonctionnaires, des principes de saine gestion et des meilleurs intérêts du pays.

La faveur dont jouissaient Paxport et ses lobbyistes est révélée par une note de service remise au Comité par M. Hession.²² Dans cette note (adressée, en date du 12 juillet 1990, à MM. Don Matthews, Jack Matthews, Peter Goring et Trevor Carnahoff), M. Hession relate deux réunions récentes susceptibles d'intéresser Paxport. [Voir la note de service de M. Hession aux personnes inscrites sur la liste d'envoi, en date du 12 juillet 1990, doc. du Comité 5700-1.35/P1-13, 1-3 #0272]

La première était une réunion qu'il avait eue la veille avec M. Shortliffe. Ils avaient discuté entre autres : 1) des critères d'évaluation qui serviraient à choisir un promoteur; 2) de la nécessité de faire adopter une politique afin qu'aucune entreprise étrangère ne puisse, directement ou indirectement, exploiter et contrôler les aéroports (cela visait vraisemblablement Canadian Airports Ltd., le concurrent potentiel, dont faisait partie la British Airport Authority; 3) de déterminer s'il y avait une politique établie afin qu'aucune entreprise privée ne joue un rôle prépondérant dans la gestion et le contrôle des aéroports (cela visait probablement l'Airport Development Corporation, le promoteur de l'aéroport 3).

²² M. Hession a fourni au Comité un certain nombre de documents, dont les derniers datent de décembre 1992, bien qu'il ait admis, durant son témoignage, que ces documents étaient loin de constituer toute la documentation pertinente disponible. Lorsqu'on lui a demandé de présenter des documents dans la période comprise entre décembre 1992 et mars 1993, M. Hession a répondu : «Sénateur, ces documents rempliraient la moitié de cette pièce». [Délibérations du Comité, le mercredi 2 août 1995, fascicule n° 9, 9:36] Bien que le Comité ait demandé à voir ces documents, il n'en a obtenu aucun ni de Paxport ni du groupe Matthews.

La deuxième réunion dont il est question dans la note de service réunissait M. William Neville, un des lobbyistes enregistrés de Paxport, et M. Everson, chef de cabinet du ministre des Transports, Doug Lewis. Selon M. Neville, dont M. Hession cite les propos, Warren Everson lui aurait fait **«un compte rendu détaillé»** la veille (10 juillet) **de l'état de la situation à la suite de la réunion du Comité des priorités et de la planification la semaine précédente.** (C'est nous qui soulignons.)

M. Neville indiquait que l'honorable Doug Lewis, ministre des Transports, avait promis au premier ministre qu'il présenterait au Cabinet, en septembre, des recommandations précises sur un processus concurrentiel «efficace» en vue de la sélection d'un promoteur pour le réaménagement complet des aérogares 1 et 2. D'après M. Everson, son ministre était passablement inquiet à l'idée que l'on puisse tenter de sauter par-dessus le processus concurrentiel et prendre une décision unilatérale.

Cette façon de faire posait, selon M. Everson, certains problèmes dont les suivants :

- les fonctionnaires du ministère des Transports avaient fait savoir au ministre qu'à leur avis il n'était pas nécessaire d'entreprendre des travaux d'agrandissement importants aux aérogares 1 et 2 avant 1997;
- Coopers Lybrand avait évalué à 1,6 milliard de dollars la valeur des aérogares actuelles, et il faudrait tenir compte de cette évaluation advenant la privatisation;
- les autres soumissionnaires potentiels exerçaient de fortes pressions, notamment des menaces de plus en plus précises de Bitove et Cogan, associés dans la British Airport Authority, qui affirmaient pouvoir intenter des poursuites en justice si on leur refusait une possibilité équitable de soumissionner.²³

²³ Comme nous le verrons, on peut soutenir que la British Airport Authority s'est vu refuser une possibilité équitable de soumissionner étant donné que la demande de propositions excluait les promoteurs sous contrôle étranger. Le Comité ne sait pas pourquoi M. Bitove et M. Cogan ont décidé de ne pas mettre leurs menaces de poursuite judiciaire à exécution. M. Jack Matthews a expliqué que ce M. Bitove était M. John Bitove père, qui «exploitait et exploite encore [...] les concessions de restauration dans les trois aérogares». M. Cogan était Edward Cogan, courtier en valeurs immobilières et promoteur. [Témoignage de M. Jack Matthews, *Délibérations du Comité*, le jeudi 21 septembre 1995, fascicule n° 22, 22:115-116] On a appris récemment que le premier ministre Brian Mulroney était intervenu activement et avait pris, selon ce que la cour a jugé, des mesures «extraordinaires» pour aider M. Bitove à obtenir la concession de restauration à l'aéroport Pearson en 1989. [Canada (*procureur général*) c. Bitove, [1995] O.J. n° 2627, dossier de la Cour n° B31/94A, décision du juge Lederman] De plus, M. Cogan était l'un des deux directeurs de la société Sagegate, entreprise qui aurait profité des contrats de deux millions de dollars attribués à M. Fred Doucet (ancien attaché politique, et ami de longue date, de M. Mulroney) contrats qui étaient subordonnés à l'obtention du contrat de l'aéroport Pearson par Paxport. [Voir le témoignage de M. Jack Matthews, *supra*, 22:122]

M. Neville a écrit ce qui suit :

«Pour en revenir au point essentiel, il est clair, pour le moment, que **Lewis n'est pas prêt de son propre chef à décider unilatéralement d'attribuer le contrat de réaménagement à Paxport/Air Canada. Il faudra le pousser à le faire ou lui en donner l'ordre**; et il convient de se demander, je crois, si c'est la bonne chose à faire, même si c'est faisable. J'ai des doutes là-dessus.» [Note de service de M. Hession aux personnes inscrites sur la liste d'envoi, le 12 juillet 1990, doc. du Comité 5700-1.35/P1-13, 1-3 #0272; c'est nous qui soulignons]

Dans son témoignage au sujet de la note, M. Hession a bien précisé que, d'après lui, une seule personne était en mesure de donner un ordre à un ministre :

Le sénateur Bryden : ... Vous avez été longtemps fonctionnaire, vous êtes peut-être l'un des plus grands experts de la Colline... Dans notre système, le système de Cabinet, qui est en mesure de soit pousser un ministre, soit lui donner un ordre?

M. Hession : Il n'y a qu'une seule personne qui puisse le faire.

Le sénateur Bryden : Et qui est-ce?

M. Hession : Le premier ministre.

Le sénateur Bryden : Donc, Brian Mulroney, à l'époque?

M. Hession : Oui. [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:87]

M. Hession termine sa note en mentionnant que l'inquiétude de voir des intérêts étrangers assumer la gestion des aéroports à Pearson et de voir l'ADC exercer un monopole sur les opérations **pourrait amener le Cabinet à entreprendre des négociations directes ou à accepter un processus concurrentiel hautement favorable à la cause de Paxport.**

«Nous devons par conséquent maintenir l'intensité de nos efforts et, d'après moi, en étendre la portée de façon à inclure l'ensemble du Cabinet et du caucus». [Note de M. Hession aux personnes inscrites sur la liste d'envoi, en date du 12 juillet 1990, doc. du Comité 5700-1.35/p. 1-13, 1-3-#0272]

La note de M. Hession révèle le rôle des lobbyistes dans le projet, le rôle du personnel politique des ministres dans l'aide apportée à Paxport, la dynamique au sein du Cabinet, la position apparemment privilégiée de Paxport ainsi que les questions de fond relatives au projet de réaménagement lui-même. Elle montre que le chef de cabinet de M. Lewis, le ministre des Transports, possédait des renseignements selon lesquels le réaménagement ne constituait pas une urgence et que les aéroports n'avaient pas besoin de

grands travaux d'expansion avant sept ans. Dans une lettre à la rédaction du *Globe and Mail* en date du 22 septembre 1995, M. Everson confirme sa rencontre avec M. Neville, déclarant que M. Lewis était bien sûr au courant de ces entretiens et les avait autorisés.

Le 17 octobre 1990, le ministre des Transports, M. Doug Lewis, annonçait son intention d'inviter des propositions concurrentielles pour l'aménagement des aéroports 1 et 2. [Communiqué n° 198/90, en date du 17 octobre 1990] À l'époque, une commission d'évaluation environnementale examinait un projet de construction de nouvelles pistes à Pearson, élaboré par Transports Canada. Lors d'entretiens avec Paxport, l'Airport Development Corporation et Canadian Airports Ltd., le ministre Lewis a bien fait comprendre qu'il n'était pas question de précipiter le projet des aéroports aux dépens de l'étude environnementale.

La demande de propositions n'a vu le jour que le 16 mars 1992, c'est-à-dire 17 mois après l'annonce. Interrogé à ce sujet, M. Barbeau a déclaré au Comité :

«Beaucoup de choses se sont passées... [I]l y avait beaucoup de discussions, comme je l'ai mentionné auparavant, et je veux dire partout, et d'autres choses se passaient.

Une chose est sûre, à la fin de cette période, le trafic aérien à Pearson a commencé à ralentir. La récession commençait à se faire sentir, et le trafic avait ralenti.»
[*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:93]

Durant ces 17 mois, Paxport exhortait le gouvernement à adopter le mécanisme de sélection le plus susceptible de lui assurer le succès, préconisant en particulier l'approche de la «définition de contrat». Voici ce qu'explique M. Hession dans une lettre adressée à M^{me} Huguette Labelle, alors sous-ministre des Transports :

«Définition de contrat — Cette option consiste en un processus à trois étapes dans le cadre duquel le promoteur est choisi par le gouvernement sur la base de considérations non financières (prix), au cours d'une première étape de 60 à 90 jours (qualification de l'entrepreneur). Le processus débouche alors sur une entente négociée, fondée sur un contrat d'aménagement proposé par le promoteur à la fin de la seconde étape de 90 à 120 jours (définition du contrat). La troisième étape (mise en oeuvre) commencerait au moment négocié dans l'entente d'aménagement. Cette option a l'avantage politique de produire une sélection objective à la première étape et d'établir un équilibre négocié entre les intérêts du gouvernement, du transporteur et de l'entrepreneur à la deuxième étape». [Voir la lettre de M. Hession à M^{me} Labelle, en date du 7 décembre 1990, et pièce jointe]

M. Hession a précisé qu'il s'agissait là de l'une de trois façons de procéder. Une autre solution était de lancer un appel de propositions concurrentielles, ce qu'il a rejeté comme étant trop long. Il a en outre signalé que cette option possédait l'avantage politique de sembler complètement objective mais que, règle générale, il y ait de fait très peu de pouvoir

discrétionnaire politique dans la prise de décision. La dernière solution consistait en un accord négocié entre le gouvernement, les transporteurs aériens et le promoteur. Même si c'était la démarche la plus expéditive, M. Hession la déconseillait, car elle avait le défaut de sembler subjective et politisée.

En plus de lui éviter la compétition, il est intéressant de noter que l'approche préconisée par Paxport réduisait au minimum le besoin pour le promoteur de prouver sa capacité de financement. Lorsque les fonctionnaires ont fait part à M. Hession de leurs préoccupations concernant les critères de sélection financiers, il a répondu :

«L'approche de la définition de contrat sous-entend un mécanisme de sélection basé sur des critères à la fois financiers et non financiers. Certes, le gouvernement se doit d'obtenir un arrangement financier avantageux et, pour ce faire, d'inclure des critères financiers dans le processus de sélection concurrentielle. [Voir la lettre de M. Hession à M^{me} Labelle, en date du 18 janvier 1991]

Ainsi, dès le début, Paxport a fait des pressions pour que toute exigence concernant les critères financiers ait trait à la question du «rendement pour l'État» et non pas à la capacité du promoteur de financer le projet.

Durant cette période, Paxport multipliait les démarches pour qu'il n'y ait pas de «déclaration d'intérêt» ni d'étape de présélection dans le processus de proposition. Comme il en a déjà été question, le projet de l'aérogare 3, qui représentait, selon le témoignage des fonctionnaires, un «modèle» du genre, avait fait l'objet d'un processus à deux volets, c'est-à-dire une déclaration d'intérêt et une phase de présélection, avant la demande de propositions.

C'est surtout au cours de la semaine du 15 avril 1991, à une série de rencontres organisées par les fonctionnaires de Transports Canada avec les trois promoteurs déclarés, soit Paxport, l'Airport Development Corporation et Canadian Airports Ltd., que les efforts de Paxport sont devenus évidents. [Doc. du Comité 001114] La note sur la rencontre avec Paxport contient le passage suivant :

«Paxport ne voit pas le besoin ni l'utilité de procéder à une déclaration d'intérêt. La présentation de trois propositions permet de satisfaire au critère de concurrence du gouvernement. Comme il est évident que trois concurrents sont en lice, il n'est pas nécessaire d'approfondir davantage. La préparation de présentations en vue d'un processus à deux étapes entraîne des coûts importants». [Doc. 001114]

Cette position contraste vivement avec celle des autres promoteurs. Ainsi, l'Airport Development Corporation s'opposait à ce que les aérogares 1 et 2 soient réaménagées dans l'immédiat :

«Transports Canada devrait avoir comme priorité absolue l'expansion de la capacité des pistes.

La position fondamentale de l'ADC est la suivante :

- le réaménagement des aérogares 1 et 2 devrait être reporté;
- l'industrie aérienne ne peut se permettre pour l'instant de gros investissements;
- il y a un excédent de capacité dans les aérogares 2 et 3;
- l'aérogare 1 devrait être laissée de côté, et les transporteurs qui s'en servent devraient être réorientés vers les aérogares 2 et 3.» [Doc. 001114]

Canadian Airports Ltd., pour sa part, privilégiait un processus en deux étapes :

«CAL est favorable à un processus d'appel de propositions en deux étapes, c.-à-d. déclaration d'intérêt et demande de propositions.

Facteurs à considérer à l'étape de la déclaration d'intérêt :

- expérience dans le réaménagement d'aérogares (seuls la BAA et Transports Canada ont cette expérience);
- antécédents dans la réalisation de grands projets ou d'opérations aéroportuaires;
- expérience dans des travaux d'aérogares, particulièrement en matière de sécurité durant la reconstruction.» [Doc. 001114]

Les documents montrent clairement que Transports Canada a recommandé l'utilisation d'un processus à deux volets, une déclaration d'intérêt suivie d'une demande de propositions. [Voir p. ex. «Les différentes façons de retenir les services d'un promoteur», en date du 8 janvier 1991, doc. du Comité 001063]

M. Wayne Power, directeur de la transition à l'aéroport Pearson, nous a confirmé que, «pour le projet des aérogares 1 et 2, il y a eu une ébauche de demande de déclarations d'intérêt». [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:13; et projet d'appel de déclarations d'intérêt, en date du 5 juin 1991, doc. du Comité 001060] La déclaration d'intérêt aurait nécessité «une description détaillée des compétences [du proposant] permettant de réaliser le projet», ce qui normalement inclurait, aux dires de M. Power, une expérience dans l'exécution de projets semblables, d'envergure et de complexité comparables. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:13]

M. Power et M. Gerry Berigan, actuellement directeur régional des Aéroports de la région de l'Atlantique et auparavant cadre supérieur responsable du projet de réaménagement des aérogares 1 et 2 à Ottawa, ont tous deux affirmé que la décision d'utiliser un mécanisme à une étape et d'éliminer celle de la déclaration d'intérêt est venue du ministre. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:9 et 6:13; et note de L.A. McComb

à V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047, confirmant la récente directive du ministre qu'il n'y ait qu'une étape au processus d'appel de propositions, c.-à-d. pas de déclaration d'intérêt ni de volet de qualification]

Il est intéressant de voir quel résultat aurait obtenu Paxport en fonction du genre de critères proposés par Canadian Airports Ltd. Ainsi que la note en fait foi, Paxport n'avait aucune expérience dans le réaménagement d'aéroports; de son propre aveu, elle n'avait aucun antécédent dans les opérations aéroportuaires, ni aucune expérience dans les activités relatives aux aéroports autres que celle d'avoir soumis sans succès une proposition pour l'aéroport 3. [Discours liminaire de Gordon Baker, *Délibérations du Comité*, en date du mercredi 13 septembre 1995, fascicule n° 18, 18:5-9]

Au moment même où elle affirmait l'inutilité de la déclaration d'intérêt, en raison de la présence de trois promoteurs intéressés, la société Paxport travaillait en coulisses pour discréditer les deux autres promoteurs. M. Hession a maintes fois écrit à M. Lewis pour le mettre en garde contre les graves risques que présentait l'inclusion de concurrents étrangers dans l'aménagement des aéroports 1 et 2. [Lettre de M. Hession à M. Lewis, en date du 19 juin 1990] Tout en visant surtout la British Airport Authority, le principal protagoniste de Canadian Airports Ltd., M. Hession incluait également l'autre grand adversaire de Paxport, l'Airport Development Corporation, dont 27 p. 100 des parts appartenaient alors à Lockheed. Et il le faisait sans aucune subtilité, affirmant que le partenaire étranger d'aujourd'hui est notre concurrent de demain. [Lettre de M. Hession à M. Lewis, le 29 juin 1990, doc. du Comité 5700-1.35/P1-13, 1-1#0271; souligné dans le document original]

Paxport préconisait en outre que le gouvernement encourage la concurrence entre les exploitants des aéroports à Pearson, en vue d'un service amélioré à des prix concurrentiels. [Questions à étudier, le 15 octobre 1990, en prévision d'une réunion avec le ministre des Transports, M. Doug Lewis, doc. du Comité 5700-1.35/P1-13, 1-2#0280] Autrement dit, l'Airports Development Corporation ne devrait pas être prise en considération pour le réaménagement des aéroports 1 et 2.

Paxport a obtenu un succès partiel dans ces démarches. En effet, la demande de propositions stipulait que, pour être admissible, le promoteur devait être «canadien au sens de la *Loi sur l'investissement Canada* (R.L.C. 1985, ch. 28 (premier suppl.)) et être contrôlé de fait par des Canadiens». Il se peut que cette condition ait empêché Canadian Airports Ltd. de présenter une proposition, mais elle n'a certainement pas exclu l'Airport Development Corporation avec sa participation américaine minoritaire.²⁴ Ultiment, Paxport a fusionné

²⁴ M. Jean Corbeil, ministre des Transports, ne connaissait apparemment pas cette restriction contenue dans la demande de propositions. Lors de sa comparaison, il s'est dit surpris que Canadian Airports Ltd. n'ait pas présenté de soumission : «J'étais persuadé qu'il y aurait au moins trois proposeurs, parce que Canadian Airports était dans le processus tout le long. Ils avaient communiqué avec nous à plusieurs reprises nous pressant de demander la proposition. Lorsque j'ai reçu, le 23 décembre 1991, une lettre à l'effet qu'ils quittaient le Canada parce que le processus avait été trop long, puis qu'il n'y avait

avec le groupe de l'aérogare 3 pour former Mergeco (puis le T1T2 Limited Partnership)²⁵ et, par conséquent, il est heureux pour Paxport que sa position contre le monopole n'ait pas prévalu.

M. Hession s'est, à maintes reprises, dit consterné du retard imposé par la nécessité d'attendre les conclusions de la commission d'évaluation et d'examen en matière d'environnement pour la proposition concernant les pistes. M. Lewis, alors ministre des Transports, ainsi que les fonctionnaires de Transports Canada, avaient déclaré un certain nombre de fois qu'ils n'avaient pas l'intention de lancer la demande de propositions avant que la Commission fédérale d'évaluation et d'examen matière d'environnement n'ait communiqué ses recommandations. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:15-16] Ces déclarations ont d'ailleurs été résumées dans une note datée du 16 mai 1991 et écrite par M. Chern Heed, directeur général de l'aéroport Pearson :

«On s'est engagé clairement envers le public à ce qu'aucune mesure ne soit prise pour agrandir la capacité de l'aéroport Pearson tant que les résultats de l'évaluation environnementale ne seront pas connus». [Doc. du Comité 001161, cité dans *Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:16; c'est nous qui soulignons]

Toutefois, comme en a témoigné M. Berigan, la demande de propositions a, pour des raisons qui lui étaient inconnues, été lancée le 16 mars 1992, cinq mois avant la publication du rapport de la Commission, le 30 novembre 1992. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:16]

Le Comité a pris connaissance d'une note énumérant les risques que comportait la publication de la demande de propositions avant que la décision soit prise au sujet des pistes. Cette note posait comme hypothèse que la déclaration d'intérêt avait donné lieu à une présélection de promoteurs. Puis, elle énumérait les risques comme suit : crédibilité réduite du PEEE aux yeux du public; réaction de la Commission elle-même; rendements à l'État

pas encore de demande de propositions d'émission, j'étais à peu près convaincu qu'ils reviendraient sur leur décision quand, trois mois plus tard, on émettrait la demande de propositions. Ça ne s'est pas matérialisé et on a eu deux proposeurs. Je rappelle que, dans T3, il y avait eu quatre proposeurs.» [*Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:42-43] En fait, cependant, Canadian Airports n'était peut-être pas admissible au processus de soumission étant donné les conditions restrictives de la demande de propositions. Reste à déterminer si la société aurait consenti les sommes d'argent et les efforts nécessaires pour élaborer une proposition. Durant l'examen de l'entente par M. Robert Nixon, M. Stephen Goudge, l'avocat qui aidait M. Nixon, a consigné pour lui-même son impression après avoir rencontré les parties intéressées : «Note BAA pensait trucage même chose AAL.» [Témoignage de Stephen Goudge, *Délibérations du Comité*, le mercredi 27 septembre 1995, fascicule n° 26, 26:34]

²⁵ La liste des différents noms de sociétés ou de partenariats peut être impressionnante. Le partenariat du groupe Claridge et du groupe Matthews s'appelait à l'origine Mergeco et a été désigné comme tel dans de nombreux documents et dans la majeure partie des témoignages. Ce nom a fini par être remplacé par la désignation Pearson Development Corporation ou PDC. La Pearson Development Corporation devait être l'associé directeur général du T1T2 Limited Partnership, l'entrepreneur du gouvernement pour le projet de réaménagement.

probablement moindres. [Document sur les risques liés au lancement de la demande de propositions avant la décision concernant les pistes, doc. du Comité 0011071] **Néanmoins, le ministre a donné ordre non seulement que le Ministère publie la demande de propositions sans attendre les résultats de l'évaluation environnementale concernant les pistes, mais aussi qu'il élimine l'étape de la déclaration d'intérêt ou de la présélection.** [Note de L.A. McCoomb à M. V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047, confirmant la récente direction du ministre au sujet du réaménagement des aérogares 1 et 2]

Or, les conclusions du rapport d'évaluation environnementale étaient, en l'occurrence, très pertinentes :

a) Il n'y a actuellement aucune probabilité que la demande de trafic passagers aérien atteigne avant 2001 et peut-être même plus tard les niveaux projetés pour 1996 dans l'énoncé des incidences environnementales;

b) Il n'y a aucun problème grave et continu de congestion à l'aéroport Pearson à l'heure actuelle. Les problèmes de congestion ont presque disparu grâce à une meilleure utilisation des pistes et à un déclin de la demande dû à la récession;

c) Une décision concernant l'expansion des pistes peut être reportée de deux ou trois ans sans risque important.» [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:17]

Ces conclusions ont été signalées au Premier ministre par M. Glen Shortliffe. [Note au Premier ministre, le 4 décembre 1992, doc. du Comité 002085]

Ainsi, dès 1992, la situation d'urgence à Pearson avait disparu : il n'était plus nécessaire d'agir immédiatement. Qui plus est, l'Association du transport aérien du Canada, association industrielle de compagnies aériennes et d'autres intérêts commerciaux de l'aviation au Canada, a affirmé au Comité avoir maintes fois fait valoir au gouvernement que le projet de réaménagement des aérogares 1 et 2 n'était pas nécessaire ni voulu par l'industrie, qu'il n'était ni opportun ni approprié. La première de ces représentations s'est faite par l'entremise d'une lettre adressée au ministre des Transports, M. Corbeil, en date du 6 septembre 1991, six mois bien comptés avant le lancement de la demande de propositions. [Doc. du Comité 00036]

Dans son témoignage, M. Gordon Sinclair, anciennement président de l'Association du transport aérien du Canada, a décrit ainsi la position de l'organisme à l'époque :

«Vous vous rappellerez que nous étions alors au beau milieu d'une très grave récession. Vous vous rappellerez aussi que l'industrie aérienne était en proie à une agitation considérable en raison du conflit opposant Air Canada et Canadien. En

1991, le volume des passagers à Pearson était en chute de 15 p. 100 par rapport au sommet atteint en 1989 et 1990. Au sortir de la récession, la reprise était incertaine. À l'époque, la situation était tout simplement trop incertaine pour justifier quelque autre conclusion que ce soit.» [*Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:77]

Deux mois plus tard, soit le 12 novembre 1991, les membres de l'Association adoptaient à l'unanimité la résolution suivante :

«Il est résolu que l'ATAC intervienne vigoureusement et immédiatement auprès du ministre des Transports et du gouvernement du Canada pour qu'ils sursoient à tout projet de réaménagement de l'aérogare 1 de Toronto jusqu'à ce que le taux de reprise du trafic de passagers soit établi et suspendent tout projet de réaménagement de l'aérogare 2 jusqu'à ce que les transporteurs utilisant cette aérogare définissent un besoin en ce sens». [Doc. du Comité 0038]

La résolution a été envoyée au ministre Corbeil le 29 novembre 1991. M. Sinclair a déclaré au Comité qu'il pensait avoir reçu une réponse au mois de mai suivant, c'est-à-dire six mois plus tard et deux mois avant la publication de la demande de propositions. [*Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:78]

Dans l'intervalle, soit le 5 mars 1992, M. Sinclair, informé qu'une demande de propositions allait paraître, envoie une autre lettre à M. Corbeil :

«Nous croyons savoir que vous lancerez une demande de propositions en vue du réaménagement et de l'exploitation des aérogares 1 et 2 de Toronto.

Cette initiative n'a pas la faveur de l'industrie aérienne du Canada parce qu'elle ne se justifie pas en ce moment. Les aérogares ne constituent pas une entreprise en soi. Ce ne sont pas des centres commerciaux. Elles font partie de la chaîne de services auxquels le consommateur a accès lorsqu'il achète un titre de transport auprès d'une compagnie aérienne ou d'un agent de voyages. Ce serait commettre une grande injustice envers les voyageurs que de consentir à un exploitant du secteur privé un tel monopole.

Il y a plusieurs années, le gouvernement a adopté, pour l'aérogare 3, une ligne de conduite assortie de conditions financières qui avaient pour but d'assurer à Transports Canada le meilleur arrangement financier possible. Les soumissionnaires potentiels savaient qu'ils pouvaient escompter l'argent des consommateurs parce que, en cas de réussite, ils se retrouveraient en position de monopole.» [Doc. du Comité 00301]

Le sens de ce message s'est éclairci lorsque M. Sinclair a comparu :

M. Sinclair : À l'époque où on a procédé à l'appel d'offres pour l'aérogare 3, on a établi un processus à deux volets, le premier ayant pour effet de permettre à certains soumissionnaires de passer au deuxième, ce qui ne posait pas de problème. Le dernier volet constituait dans les faits le stade financier. En réalité, le projet avait été évalué principalement sur la foi du rendement financier qu'il procurait à Transports Canada et au gouvernement du Canada.

En d'autres termes, les promoteurs pouvaient présenter une soumission relativement élevée, sachant qu'ils allaient se retrouver en situation de monopole par rapport aux transporteurs devant faire appel à l'aérogare. Ils recouvreraient de la sorte les sommes qu'ils avaient présentées comme des coûts à Transports Canada. Ils pourraient récupérer ces sommes auprès des transporteurs aériens et du public voyageurs.

Le sénateur Kirby : Voilà essentiellement ce qu'a fait Paxport dans sa réponse à la demande de propositions?

M. Sinclair : Exactement. C'est pourquoi nous nous sommes opposés à ce type de démarche, qui fait qu'un promoteur privé ne peut pas perdre. **En fait, il soumissionne sur la foi de l'argent de quelqu'un d'autre.** [*Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:79; c'est nous qui soulignons]

Air Canada s'est également opposé au lancement d'une demande de propositions. M. Dominic Fiore, directeur principal de l'immobilier à Air Canada (maintenant à la retraite) a déclaré ce qui suit au Comité :

«Comme vous le savez, en 1990 la récession a frappé l'industrie aérienne, au Canada et partout dans le monde, comme un immense raz-de-marée. Air Canada se lança dans un difficile exercice de compression des coûts et des opérations. Certains itinéraires non rentables ont été abandonnés, des avions ont été vendus, toutes les dépenses en immobilisations ont été reportées, et l'on amorça un processus de mise en disponibilité qui allait toucher des milliers d'employés. En outre, on décida de réduire l'ampleur de la deuxième étape du processus de réaménagement de l'aérogare, de sorte que celle-ci allait coûter 160 millions de dollars, au lieu des 250 millions prévus à l'origine. On décida aussi de reporter ces travaux jusqu'à ce que la situation financière d'Air Canada s'améliore de façon sensible.

Au moment où Air Canada prenait ses premières mesures de compression, le gouvernement fédéral annonçait son intention de solliciter des propositions en vue de réaménager les aérogares 1 et 2. Le gouvernement demanda aussi l'avis d'Air Canada quant à la façon d'apporter d'autres améliorations à l'aérogare 2, de façon à pouvoir fournir un devis aux soumissionnaires intéressés.

Nous avons fourni au gouvernement nos plans pour la deuxième étape des travaux de réaménagement, mais nous lui avons demandé de différer sa demande de propositions, compte tenu de notre situation financière difficile et notre incapacité

à absorber des coûts d'exploitation d'aérogare plus élevés. Cela dit, nous estimions que notre intérêt à plus long terme dans l'aérogare 2 serait protégé par le document sur les principes directeurs.» [Délibérations du Comité, le mercredi 16 août 1995, fascicule n° 12, 12:76]

Même Claridge Properties Ltd., qui a fini par devenir l'associé dominant dans le T1T2 Ltd. Partnership, a écrit à M. Gilles Loiselle, président du Conseil du Trésor et ministre d'État aux Finances, le 13 novembre 1991, pour marquer son opposition au lancement d'une demande de propositions en vue du réaménagement des aérogares 1 et 2. [Lettre de M. Peter Coughlin, président de Claridge Properties Ltd., à M. Gilles Loiselle, le 13 novembre 1991, doc. du Comité 001137] La lettre précisant que les Lignes aériennes Canadien International, Air Canada et l'Association du transport aérien du Canada étaient, sur ce plan, du même avis que Claridge.

M. Coughlin faisait état, en conclusion, de la radicale diminution des niveaux de trafic à l'aéroport Pearson :

«Le trafic à Pearson atteint actuellement les niveaux de 1987. Avec l'ouverture de l'aérogare satellite 3, en décembre 1991, et les importantes rénovations dont vient de faire l'objet l'aérogare 2, Pearson a suffisamment de capacité d'accueil, MÊME SI L'ON LAISSE L'AÉROPORT 1 DE CÔTÉ, pour encore six à sept ans». (En majuscules dans l'original) Il continue en ces termes :

«De plus, à moins que toutes les prévisions soient incroyablement inexactes, les propriétaires de l'aérogare 3 prendraient **à leurs frais** les dispositions nécessaires pour aménager l'autre moitié de la jetée B, actuellement non utilisée.» Les travaux se feraient **en quelques mois, sans qu'il en coûte un sou au gouvernement, et augmenteraient suffisamment la capacité pour répondre aux besoins jusqu'au-delà de l'an 2000.**» [Lettre de M. Peter Coughlin, président de Claridge Properties Ltd, à M. Gilles Loiselle, en date du 13 novembre 1991, doc. du Comité 001137, page 4; c'est nous qui soulignons]

Le 13 mars 1992, le député conservateur de Mississauga-Sud, M. Don Blenkarn, écrivait au ministre Corbeil pour protester contre le projet de réaménagement de l'aéroport Pearson. Il affirmait que, d'après les volumes actuels et, en fait, les volumes prévus presque jusqu'à l'an 2000, l'expansion des aérogares ne pouvait se justifier. Il ajoutait que, à moins d'avoir de nouvelles pistes, il n'était pas du tout nécessaire d'améliorer ou d'agrandir les aérogares; il suffisait simplement d'effectuer l'entretien courant.

Sa lettre continuait ainsi :

«La perception de tous ceux qui critiquent notre gouvernement est qu'il s'agit là, en quelque sorte, d'une faveur faite à des amis qui désirent aménager des aéroports; ça ne sent pas bon, ça ne paraît pas bien, ça suscite des doutes, ça ne colle tout simplement pas.

Comme le dit Terence Corcoran [dans le *Globe and Mail*] : "La privatisation est une chose souhaitable, mais les limites du cadre sont jusqu'ici trop mal définies." Tellement mal définies, en fait, que cela endommage gravement notre crédibilité. Tellement mal définies, en fait, que cela devient indéfendable. À mon avis, rien ne détruit autant la crédibilité politique que de faire quelque chose qui ne se justifie pas dans l'esprit du public. Le problème a beaucoup d'importance pour moi et pour les autres députés de Mississauga. Dans un an environ, nous devrons retourner aux urnes dans Mississauga et, lorsqu'il se fait des choses dans notre ville qui portent atteinte à notre crédibilité ou à celle du gouvernement, cela complique d'autant notre tâche.

M. Horner, M. Chadwick et moi-même connaissons les liens étroits qui unissent un certain nombre des proposants du projet de réorganisation, leurs relations avec notre parti et combien ils nous ont appuyés par le passé. De notre point de vue, il s'agit d'abord et avant tout d'être élus. Notre intérêt dominant est de voir à ce que nos électeurs, et le pays en général, soient bien gouvernés. Or, en ce moment, la proposition dans son ensemble ne fait pas le poids, et il est bien évident que nos détracteurs le savent.» [Doc. du Comité 000996]

De l'autre côté de la Chambre, M. Jean Chrétien, alors chef de l'opposition, a vivement protesté contre le lancement de la demande de propositions et il a dénoncé le climat de patronage qui déjà se faisait sentir. Le 12 mars 1992, il s'est adressé au ministre des Transports durant la période des questions; dans sa réponse, celui-ci a pris soin d'éviter la question du patronage :

L'hon. Jean Chrétien (chef de l'opposition) : Le gouvernement a annoncé qu'il allait immédiatement donner suite à son projet de privatiser les aérogares 1 et 2 de l'aéroport Pearson, un aéroport qui fait 100 millions de dollars de bénéfices par an. Les lignes aériennes, la province et les administrations régionales n'en voient pas la nécessité.

Le ministre [des Transports] peut-il me dire pourquoi il donne suite à ce projet alors que tout le monde s'en passerait? Pourquoi veut-il permettre au secteur privé de faire 100 millions de profit au détriment du gouvernement?

[...]

Mais le ministre a maintenant dit que les promoteurs auront 90 jours pour soumettre des propositions en vue d'acquiescer ces aéroports. Les Canadiens devraient savoir qu'une société, Paxport, bénéficie d'une grande longueur d'avance. Elle avait même exposé il y a deux ans au Club Rideau la maquette d'un projet de nouvelle aéroport pour la montrer aux députés. Cette société compte parmi ses membres importants Don Matthews, un ancien président du Parti progressiste conservateur et un collecteur de fonds pour le premier ministre lors de sa campagne à la direction du Parti.

Nous savons tous que le premier ministre aime lancer les dés. Le ministre peut-il nous assurer qu'en l'occurrence il n'est pas en train de truquer les dés pour ses amis?

L'hon. Jean Corbeil (ministre des Transports) : Monsieur le Président, il faudrait peut-être se rappeler que, lorsque les propositions ont été demandées pour la construction du terminal 3, le personnage dont le chef de l'opposition vient de parler était un des proposeurs, mais ce n'est pas lui qui a eu le contrat, ce sont plutôt des amis du Parti libéral. [*Débats des Communes*, le 12 mars 1992, p. 8121-22]

Le lendemain, le sujet refaisait surface pendant la période des questions, abordé cette fois-ci par M. John Manley :

M. John Manley (Ottawa-Sud) : ... Pourquoi le ministre n'admet-il pas que l'annonce de ce projet sent l'opportunisme et le favoritisme politiques à plein nez et pourquoi, comme M. Sinclair de l'Association du transport aérien du Canada l'a suggéré, n'attend-il pas jusqu'à 1993 afin de voir comment les choses se passent dans l'industrie du transport aérien?

[...]

Madame la Présidente, on ne sait pas trop qui prend les décisions pour Transports Canada dans ce dossier. [*Débats des Communes*, le 13 mars 1992, p. 8183]

Comme il l'avait fait la veille, M. Corbeil a éludé la question si ce n'est pour dire : «Nous avons pris note de son objection [celle de M. Sinclair].» Encore une fois, il a refusé de répondre aux questions concernant le patronage. [*Débats des Communes*, le 13 mars 1992, p. 8183]

Lancement de la demande de propositions

En dépit des nombreuses représentations et exhortations qui lui ont été adressées, le gouvernement a, le 16 mars 1992, lancé la demande de propositions. Celle-ci établissait à 90 jours le délai de réponse. Les documents produits pour le Comité révèlent l'inquiétude ressentie à Transports Canada au sujet de la brièveté du délai imparti. Dans une note adressée

le 29 octobre 1991 à M. Barbeau, M. Chern Heed, directeur général de l'aéroport Pearson, s'exprimait ainsi :

«Nous nous inquiétons encore de la façon dont sera perçu le très court délai imposé pour répondre à la demande de propositions (90 jours), par rapport à l'intégrité du processus. Cette inquiétude a été alimentée par les observations de Price Waterhouse, la maison d'experts-conseils retenue pour aider à préparer la demande. Price Waterhouse a, de son propre chef, noté que, même si le Ministère est disposé à étudier les demandes de prorogation, **l'imposition d'un délai de réponse de 90 jours dans la demande risque de donner l'impression que le Ministère n'a pas l'intention d'appliquer un processus pleinement concurrentiel.**

La quantité et la complexité des questions auxquelles les proposants doivent répondre par des propositions solides et complètes **exigeraient au moins six(6) mois**. En outre, si d'autres groupes se manifestent en plus des trois qui ont déjà préparé des propositions préliminaires, on pourrait s'attendre à une demande de prorogation d'au-delà de ces six mois. Nous espérons qu'il se présentera une occasion de revoir la question du délai de réponse imposé dans la demande de propositions.» [Doc. du Comité 000639; c'est nous qui soulignons]

M. Wayne Power a lui aussi déclaré au Comité que **le délai de réponse de 90 jours aurait été contraignant pour les nouveaux groupes désireux de présenter une proposition**. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:38] M. Power a précisé dans son témoignage qu'il avait été question, lors de plusieurs rencontres à cette époque, du délai de 90 jours. Selon lui, la proposition était plus complexe que celle de l'aérogare 3 et, dans ce dernier cas, le délai de réponse avait été de quatre mois et demi. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:17-18] (En fait, comme nous l'avons vu, le projet de l'aérogare 3 a fait l'objet d'un processus en deux étapes, et l'intervalle entre l'appel des déclarations d'intérêt et la date limite pour la présentation des propositions a été de sept mois. [*Délibérations du Comité*, le mercredi 12 juillet 1995, fascicule n° 3, 3:27])

En fait, Paxport avait exercé de fortes pressions pour que le délai soit court. Par exemple, lorsque M. Hession a écrit à M. Lewis, le 22 octobre 1990, pour discuter de la future demande de propositions, il lui a présenté une liste de questions destinées, disait-il, à concentrer davantage l'attention sur des problèmes particuliers à la situation. La première question était la suivante :

«Eu égard aux propositions spontanées et à l'avis donné dans l'annonce du ministre en date du 18 octobre 1990, le Ministère a-t-il l'intention de ramener la période accordée aux soumissionnaires pour préparer leur proposition et remettre leur réponse à, disons, six à huit semaines, de façon à accélérer le processus d'évaluation et de décision?» [Voir la pièce jointe à la lettre de M. Hession à M. Lewis, en date du 22 octobre 1990, doc. du Comité 5700-1.35/P1-13, 1-2#0281]

Les experts-conseils indépendants dont le gouvernement avait retenu les services pour préparer la demande de propositions ont exprimé des inquiétudes quant à la brièveté du délai imparti, mais le gouvernement a maintenu la limite de 90 jours. Et, d'après M. Power, cette décision est venue directement du ministre :

M. Power : Le ministre nous a indiqué que le délai serait de 90 jours. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:34]

Une étude des documents produits pour le Comité permet de confirmer ce témoignage. En effet, une note datée du 21 août 1991 appuie l'interprétation tirée par les fonctionnaires de Transports Canada de la récente directive du ministre concernant le réaménagement des aérogares 1 et 2. On y trouve les trois points suivants : 1) la consigne d'adopter un processus d'appel de propositions à une seule étape, c.-à-d. sans déclaration d'intérêt ni volet de qualification; 2) le fait que la demande de propositions imposera un délai de réponse de 90 jours à partir du lancement de la demande; 3) la permission de lancer la demande avant la fin de l'étude environnementale relative au projet du ministère de construire de nouvelles pistes à l'aéroport Pearson.) [Note de L.A. McCoomb à V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047; c'est nous qui soulignons]

Le délai de 90 jours a fini, à la demande de Claridge, par être prorogé de 30 jours. Cependant, cela ne s'est produit qu'au milieu de la période initiale de 90 jours, c'est-à-dire trop tard pour aider les candidats potentiels, déjà dissuadés par le peu de temps accordé.

M. Allan Crosbie, conseiller financier qui a aidé M. Nixon dans son enquête, éprouvait des inquiétudes «quant au processus et à la rigueur avec laquelle Transports Canada a trouvé des soumissionnaires; d'après ce que certains nous ont dit, sa façon de procéder n'était pas très professionnelle, ni très adéquate». [*Délibérations du Comité*, le mercredi 27 septembre 1995, fascicule n° 26, 26:81] Il a critiqué la façon de présenter la demande de propositions, laissant entendre qu'il n'y avait guère de quoi susciter l'intérêt des possibles soumissionnaires :

«Il y a moyen de présenter une affaire de façon à optimiser les intérêts du vendeur et, en l'occurrence, c'est le gouvernement qui était le vendeur; il suffit de jeter un coup d'oeil à la demande de propositions pour constater que c'est un document très aride, qui ne ressemble en rien à une offre de vente alléchante. Ce n'est pas une offre écrite dans le but d'expliquer à un acheteur éventuel pourquoi il s'agit d'une opération alléchante qui lui permettra de gagner de l'argent, comment financer le projet, quels sont les gains réalisables et tous les avantages qui en découleront. **Cette demande de propositions n'avait rien d'un document que l'on préparerait si l'on voulait vraiment conclure un marché, obtenir une valeur maximale et intéresser les gens aux produits que l'on a à offrir.**

En second lieu, il faut mettre en oeuvre un processus très efficace en vue de trouver des soumissionnaires, d'en créer au besoin, de communiquer avec eux, de leur expliquer comment procéder pour décrocher le contrat, d'aider les membres du consortium à se regrouper. Là encore, je ne pense pas que cela ait été fait, et personne n'y a pensé, de toute façon[...]. Nous en avons eu la confirmation par la suite lors de nos entretiens avec les fonctionnaires de Transports Canada.» [Délibérations du Comité, le mercredi 27 septembre 1995, fascicule n° 26, 26:81-82]

Ce témoignage concorde avec les preuves présentées au Comité : le gouvernement jugeait suffisante la présence de deux ou trois parties intéressées et n'essayait pas d'en trouver d'autres. Il faut préciser que les conditions stipulées dans la demande de propositions peuvent avoir contribué à la disqualification de l'une des parties (la British Airport Authority) et que le résultat final a été la fusion des deux autres.

La possibilité pour une AAL de répondre à la demande de propositions

La demande de propositions ne permettait pas d'établir l'admissibilité d'une administration aéroportuaire locale. M. Gardner Church a déclaré ce qui suit :

«Quand le gouvernement fédéral a décidé d'émettre la demande de propositions [...] le gouvernement provincial a convenu de garantir, au besoin, une soumission qui était conçue pour remettre la gouverne des aéroports au secteur public[...].

[N]ous avons entrepris quelque chose qui aurait pu donner lieu à une soumission crédible. Mais il était presque immédiatement devenu évident que, étant donné la nature de la demande de propositions, qui exigeait des dessins très détaillés et de solides analyses du réseau électrique pour les installations de communication et l'immeuble administratif, et diverses autres questions, il serait très difficile de présenter une proposition complète avant la date d'échéance.

Néanmoins, [tout a été] fait pour y arriver. Ce n'est que lorsque le gouvernement fédéral les a informés que leur soumission ne pourrait être acceptée en raison de leur perception de la participation provinciale qu'ils ont remis leurs travaux à un autre groupe, qui a fini par présenter la soumission en leur nom.» [Délibérations du Comité, le mardi 25 juillet 1995, fascicule n° 5, 5:24-25]

M. Meinzer a plus tard déclaré «que nous n'étions pas certains, que nous avons essayé d'obtenir une réponse précise, à savoir si une administration aéroportuaire avait le droit de soumissionner. À ce jour, je ne peux pas encore vous donner une réponse précise à cette question, je ne sais pas si une administration aéroportuaire avait le droit en fin de compte de soumissionner.» [Délibérations du Comité, le mardi 25 juillet 1995, fascicule n° 5, 5:27]

Ce que ces personnes ignoraient à l'époque, c'était le lobbying que menait Paxport contre eux. Lors de rencontres avec les fonctionnaires de Transports Canada, M. Hession a maintenu que les municipalités et les administrations aéroportuaires locales devraient être empêchées de soumissionner. [Note de M. Ray Hession à MM. Don Matthews, Jack Matthews, Lorn Sinclair et Trevor Carnahoff, en date du 16 avril 1991]

M. Hession informait plus tard ses employeurs que, d'après les affirmations des fonctionnaires de Transports Canada, les propositions venant des municipalités, que ces dernières soient seules, en groupes ou en coentreprises avec des intérêts privés, ne se qualifieraient pas en vertu de la future demande de propositions pour les aérogares 1 et 2. [Note de M. Ray Hession à MM. Don Matthews et Jack Matthews, en date du 14 mai 1991]

Paxport et la demande de propositions

Entre-temps, Paxport préparait sa réponse. M. Hession a fourni au Comité des notes qu'il avait distribuées pendant une séance d'établissement des stratégies à Paxport et qui laissent entrevoir comment Paxport comprenait sa position par rapport à ses concurrents. [Note de M. Hession à M. Don Matthews, M. Jack Matthews et quatre autres personnes, en date du 19 mars 1992]

Ces notes cotent la valeur concurrentielle de Paxport par rapport aux candidats anticipés. L'évaluation varie de «faible», à «satisfaisant» et à «fort». Même à cette étape, Paxport considérait sa position financière comme faible; en regard du critère concernant le niveau de financement susceptible d'assurer la réalisation de la phase d'aménagement, M. Hession a en effet inscrit la mention «faible». La capacité financière et l'expérience en planification financière de Paxport ont également été cotées «faible», tout comme sa capacité de lever des fonds ou de contracter des dettes.

Changement d'allégeance : M. Andy Pascoe

Pendant qu'elle préparait sa réponse à la demande de propositions, la société Paxport a embauché un nouvel employé, l'hon. Andy Pascoe. Celui-ci venait du cabinet de M. Doug Lewis où, de mars 1990 à avril 1991, alors que M. Lewis était ministre des Transports, il avait occupé le poste d'adjoint spécial, aviation et aéroports, assurant «la liaison entre le ministre et les fonctionnaires de Transports Canada pour les questions politiques en rapport avec la gestion et l'exploitation des aéroports». Pendant son séjour à Transports Canada, a-t-il déclaré au Comité, il était «responsable de toute une série de dossiers concernant l'aéroport Pearson». [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:37].

On a établi que M. Pascoe a représenté le cabinet du ministre lors de rencontres avec chacun des promoteurs potentiels des aérogares 1 et 2. [Doc. du Comité 001114] M. John Desmarais a révélé au Comité que «toutes les propositions non sollicitées que nous avons

étudiées étaient envoyées au cabinet du ministre puis, par la suite, au sous-ministre». [*Délibérations du Comité*, le mardi 15 août 1995, fascicule n° 11, 11:84] Il est donc évident que M. Pascoe a eu accès à de l'information confidentielle au sujet des rivaux de Paxport, et peut-être aussi à de l'information concernant les propositions spontanées soumises par chacun d'eux ainsi qu'à des données sur leurs points forts et leurs faiblesses tels que perçus par les fonctionnaires de Transports Canada.

Il est en outre évident que M. Pascoe avait accès à des renseignements d'initiés sur les priorités et les préoccupations du Ministère en rapport avec le projet de réaménagement Pearson. Toute cette information pouvait donner à Paxport une longueur d'avance dans la préparation et la présentation de sa proposition, sans parler de l'apparence de conflit découlant de la possibilité que M. Pascoe n'ait pas coupé tous ses liens avec le cabinet du ministre et avec les fonctionnaires de Transports Canada.

Le Comité n'a pas essayé de déterminer si oui ou non M. Pascoe avait enfreint le *Code régissant la conduite des titulaires de charge publique en ce qui concerne les conflits d'intérêts et l'après-mandat*. **Toutefois, nous nous interrogeons sérieusement sur l'impartialité d'un processus qui permet à un influent initié — la personne chargée, au cabinet du ministre des Transports, de tenir le ministre au courant du projet de réaménagement — de se joindre à l'une des sociétés soumissionnaires.**

Évaluation des propositions : l'établissement des critères

À la fin de l'étape de la demande de propositions, il ne subsistait que deux propositions admissibles : celle de Paxport Inc. et celle de l'Airport Terminals Development Group (ATDG), dont Claridge était l'élément dominant.²⁶ Les propositions ont été évaluées par un comité de Transports Canada dirigé par M. Ron Lane. Il appert de nouveau que le ministre des Transports a porté une attention personnelle à ce travail. M. Lane a en effet révélé «que le comité d'évaluation a été approuvé par le ministre[...]. Les coefficients de pondération et toute la documentation relative à l'évaluation ont été soumis au ministre, à sa demande». [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:59]

En fait, le ministre des Transports avait activement participé à l'établissement de quelques-uns des critères d'évaluation. D'après une note interne de Transports Canada, le Ministre a personnellement ordonné que certains points soient pris en considération dans le processus d'évaluation :

²⁶ Une troisième proposition a été reçue, de Morrison Hershfield, mais elle a été éliminée pour non-respect des exigences de base : Morrison Hershfield n'y a pas inclus le dépôt réglementaire d'un million de dollars. Au cours de son enquête, M. Nixon a rencontré les représentants de Morrison Hershfield et a appris que la société «avait d'abord répondu à la demande de propositions, mais qu'elle avait décidé de ne pas verser le dépôt d'un million de dollars requis parce qu'elle avait l'impression, compte tenu des réalités de la situation, que ses chances de succès étaient très minces». [Déclaration de M. Robert Nixon, *Délibérations du Comité*, le mardi 26 septembre 1995, fascicule n° 25, 25:9]

«La présente a pour but de confirmer mon interprétation de la consigne récemment donnée par le Ministre au sujet du réaménagement des aéroports 1 et 2 :

[...]

- g) Il faut prendre en considération, dans l'évaluation du projet, les avantages industriels, dont le contenu canadien et l'accroissement du potentiel d'exportation. La pondération précise de ce facteur extérieur à l'aéroport et la méthode d'évaluation applicable doivent être déterminées en consultation avec les autres ministères, avant le début de l'évaluation.
- h) [Passage supprimé par l'AIPRP] Par conséquent, il n'y aura pas d'analyse financière et conceptuelle détaillée d'une éventuelle aéroport construite par l'État, permettant de comparer les solutions du secteur privé à celles du secteur public. Les possibilités de rendement du réaménagement des aéroports 1 et 2 pour l'État doivent plutôt être évaluées par une entreprise qualifiée d'experts-conseils en gestion et les résultats serviront à évaluer les solutions de rechange.» [Note de L.A. McCoomb à V.W. Barbeau, le 21 août 1991, doc. du Comité 001047]

Le lobbying de Paxport avait porté fruit. La société avait exercé d'énormes pressions afin de persuader le gouvernement d'utiliser le projet comme fondement pour la création au pays d'une industrie de développement aéroportuaire viable, capable de promouvoir tant la concurrence intérieure que les débouchés commerciaux internationaux. [Questions pour Transports Canada annexées à une lettre de M. Hession à M. Doug Lewis, ministre des Transports, en date du 22 octobre 1990, doc. du Comité 5700-1.35/P1-13, 1-2-#0281] Comme il en a déjà été question, Paxport avait beaucoup insisté pour que le rendement pour l'État pèse lourd dans la balance.

Le ministre a alors décrété que le gouvernement n'établirait pas un modèle détaillé d'une «construction par l'État» à des fins de comparaison. Autrement dit, le comité d'évaluation (et, en fait, le gouvernement) ne serait pas en mesure de comparer les propositions à un modèle prévoyant la réalisation des travaux par Transports Canada lui-même.

C'est un élément qui nous a considérablement étonnés durant les délibérations : pourquoi n'y a-t-il jamais eu d'étude sur ce qui arriverait si Transports Canada lui-même procédait au réaménagement? La réponse était cachée dans les documents : c'est parce que le ministre des Transports avait ordonné qu'il n'y ait pas d'étude du genre.

Il ressort clairement des documents produits pour le Comité que, d'après Transports Canada, l'absence d'une telle étude de référence discréditait le rapport d'évaluation des

propositions. En effet, une note interne datée du 3 novembre 1992 contient les passages suivants :

«Le proposant laisse entrevoir un intéressant rendement financier pour le gouvernement si toutes les hypothèses et les conditions se réalisent. Toutefois, le rapport d'évaluation ne contient aucune comparaison entre le rendement de la proposition pour le gouvernement et une hypothèse fondée sur le maintien de l'exploitation de l'aéroport par le gouvernement. On n'a pas établi de scénario de référence gouvernementale dans le cadre de la demande de propositions[...].

En l'absence d'un scénario de référence valable, basé sur une méthodologie et des hypothèses communes, il est impossible d'établir avec certitude que la proposition ne sera pas financièrement plus préjudiciable au gouvernement que s'il avait lui-même continué à exploiter les aéroports.» [Considérations relatives au réaménagement potentiel des aéroports 1 et 2, le 3 novembre 1991, doc. du Comité 001445; c'est nous qui soulignons]

Expliquant la pondération utilisée durant l'évaluation, M. Lane a précisé que les qualifications de chaque proposant ne comptaient que pour 5 p. 100. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:60]

Par conséquent, les qualifications financières de chaque proposant, c'est-à-dire leur capacité de réaliser leurs propositions, ont été à peine prises en considération à l'évaluation. Erreur fatale, car ceux qui ont présenté la proposition primée n'avaient pas les compétences financières pour exécuter ce qu'ils avaient proposé.

Par contre, le rendement de chaque proposition pour l'État a pesé très lourd dans la balance : des 40 points de pourcentage attribués au plan d'entreprise, 50,6 p. 100 ont été alloués au rendement envisagé pour l'État. [Rapport d'évaluation des propositions, doc. du Comité 001765]

Évaluation des propositions : Le rapport

Le rapport d'évaluation précise que l'Airport Terminals Development Group (ou Claridge) avait présenté un plan d'entreprise solide, prudent et réalisable, au fait des réalités financières actuelles de l'industrie aérienne pour ce qui est de l'établissement d'une stratégie de prix (faible imposition à court terme, un à huit ans environ, augmentant seulement une fois la construction de la phase 1 terminée, en 1998). [Doc. du Comité 001765, p. 90]

Au contraire, Paxport avait choisi une approche beaucoup plus généreuse pour établir les paiements à verser à l'État, haussant ainsi fortement le rendement pour l'État. Toutefois, l'hypothèse critique du plan d'entreprise était qu'une large part des frais d'immobilisations de même que des paiements à l'État pouvait être transférée aux compagnies aériennes et qu'il

serait possible de renégocier les baux des compagnies en fonction des stratégies et niveaux d'établissement de prix. [Doc. du Comité 001765, p. 90]

On note dans le Rapport que n'importe laquelle de ces questions aurait pu amener Paxport à réduire la portée du projet ou à retarder le réaménagement, en particulier le premier stade, et aurait pu aussi entraîner des réductions du rendement pour l'État et mettre en doute la viabilité financière de la proposition. [Doc. du Comité 001765, p. 90]

Les auteurs du Rapport admettent aussi que la proposition de Paxport entraînerait des augmentations de coût importantes pour les transporteurs - coûts que ces derniers répercuteraient sur le public voyageurs :

«Le gros des coûts d'investissement et de l'augmentation des coûts d'exploitation (y compris les paiements à l'État) sera affecté aux transporteurs aériens. Selon les projections de recettes de Paxport, ces coûts doubleront pour passer d'environ 30 millions à 60 millions de dollars la première année du bail, puis seront multipliés par quatre dans les dix premières années du bail... Le projet de réaménagement doit certes faire ses frais et rapporter une somme raisonnable aux investisseurs, mais les compagnies aériennes canadiennes et internationales pourraient critiquer le montant et le rythme de l'augmentation de leurs coûts.»[Doc. du Comité 001765, p. 108-109]

Il semblerait donc que les fonctionnaires de Transports Canada pensaient déjà que la proposition de Paxport pourrait présenter des difficultés, alors même que l'on était en train de rédiger le Rapport d'évaluation. La proposition de Paxport était fondée sur l'hypothèse que les coûts du promoteur, y compris les paiements élevés à l'État qui avaient fait retenir la proposition, pourraient être assumés par les compagnies aériennes, qui les répercuteraient sur les voyageurs. C'est donc le public voyageurs qui, en dernière analyse, subventionnerait à la fois le rendement pour l'État et les coûts - et les bénéfices - du promoteur. Il est important de noter que le Comité d'évaluation s'est montré explicite dans son rapport lorsqu'il a conclu que n'importe laquelle de ces questions pourrait entraîner des réductions des paiements à l'État et mettre en doute la viabilité financière de la proposition.

Quoi qu'il en soit, le Comité d'évaluation, se basant sur les critères fixés, a déterminé que le projet de Paxport représentait la «meilleure proposition globale» et que celui de Claridge était acceptable lui aussi. Comme les audiences l'ont montré, les conséquences probables des propositions sur le public voyageurs ne sont pas entrées en ligne de compte durant le processus d'évaluation. [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:72]

Évaluation du Rapport d'évaluation

(1) Vérification du «processus» par Raymond, Chabot, Martin & Paré

Le Rapport du Comité d'évaluation a été soumis à une vérification indépendante confiée à la firme Raymond, Chabot, Martin & Paré. Il est cependant ressorti des témoignages que ces vérificateurs avaient reçu un mandat très restreint. M. Robert L'Abbé, l'auteur du rapport Raymond, Chabot, a été très clair : «Nous n'avons effectué aucune évaluation [...] tout ce que nous avons fait, c'est nous assurer qu'il y avait des réponses à toutes les questions et que la méthodologie établie avant que le comité n'entre en jeu et ne fasse son évaluation avait été suivie ...» [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:56]

Ainsi, si le processus concernant les aéroports 1 et 2 est passé entre les mains de deux «vérificateurs» – la firme Raymond, Chabot et la firme Price Waterhouse, qui avait les documents en garde –, ni l'un ni l'autre n'a été habilité à s'interroger sur la validité du processus institué par le gouvernement. Ils se sont contentés de veiller à l'exécution à la lettre du processus qui leur avait été indiqué.

(2) Évaluation financière : le rapport Edlund

Lorsqu'il a comparu devant le Comité, le sous-ministre de l'Industrie, du Commerce et de la Technologie, M. Harry Swain, a dit au Comité que, à l'automne de 1992, «le ministre de l'époque, l'honorable Michael Wilson, a commencé à se préoccuper des négociations concernant l'aéroport Pearson. Il s'interrogeait particulièrement sur la compétence financière des soumissionnaires, leur capacité de répondre aux obligations à long terme qui étaient envisagées, et il m'a demandé des renseignements et des conseils». [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:5, c'est nous qui soulignons]

M. Swain a dit au Comité qu'il avait parlé de cette question avec la sous-ministre des Transports, M^{me} Huguette Labelle, qui avait accepté d'ouvrir les dossiers à deux experts d'Industrie Canada. M^{me} Connie Edlund, c.a., directrice intérimaire, Administration des prêts aux petites entreprises, a été chargée de cette tâche en octobre 1992. Elle nous a fait part de ses conclusions dans les termes suivants :

«Essentiellement, nos constatations étaient les suivantes : **sur le plan de la viabilité financière, nous étions d'avis que la proposition d'ATDG était la meilleure.** La proposition de Paxport nous préoccupait à plusieurs égards. Entre autres, les capitaux prévus dans la proposition de Paxport paraissaient insuffisants et étaient nettement inférieurs à ce qui était proposé par ATDG.

En outre, plus de 39 millions de dollars devaient provenir d'un appel public à l'épargne en 1996, ce qui n'aurait peut-être pas été faisable. On avait prédit des dividendes de 10 p. 100 aux actionnaires dans l'immédiat. Une bonne part des frais d'investissement (16 p. 100, je crois) devait provenir des rentrées d'argent découlant de l'exploitation elle-même.

Les prévisions quant aux recettes paraissaient trop optimistes. Si la situation ne se déroulait pas comme on l'avait prévu, par exemple, si le montant prévu des frais d'investissement était dépassé, si l'appel public à l'épargne se soldait par un échec, si les recettes tirées de l'exploitation ne suffisaient pas, et ainsi de suite, les actionnaires, et particulièrement le groupe Matthews, le principal actionnaire, ne nous paraissaient pas avoir les ressources financières nécessaires pour combler l'écart. Les frais de gestion prévus par Paxport nous paraissaient très élevés.» [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:6-7; c'est nous qui soulignons]

M^{me} Edlund a par la suite précisé sa pensée au sujet des frais de gestion : «Il va sans dire qu'ils sont très, très élevés, extrêmement élevés». [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:23] Elle a dit :

«Eh bien, les frais de gestion : ce point nous a un peu accrochés. Nous avons commencé à l'étudier... je crois que l'augmentation ressort, de fait, dans l'une des annexes. En fait, si vous regardez l'avant-dernière page du rapport, il est question de l'augmentation marquée des frais de gestion qui seraient versés, et l'augmentation est importante.

Dans la proposition d'ATDG, nous avons vu que l'augmentation représentait 15 p. 100 environ et qu'elle était appliquée uniformément, ce qui nous paraissait assez raisonnable. Toutefois, il y avait l'augmentation des frais de gestion dans le cas de Paxport... de 24 p. 100 à 42 p. 100 en 1998, les 42 p. 100 se maintenant. Cela nous paraissait très élevé. Nous en avons pris note.

Nous avons donc été amenés à nous interroger là-dessus : à coup sûr, avec l'effet combiné des dividendes versés à raison de 10 p. 100 et des frais de gestion établis à 42 p. 100, la situation serait quelque peu fragile... pour ce qui touche les recettes projetées et les capitaux, un peu. Du point de vue financier, cela nous inquiétait un peu.» [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:10]

M^{me} Edlund fait observer dans son rapport ce qui suit : «Si la proposition de Paxport génère des flux de trésorerie aux niveaux prévus, ces frais de gestion élevés ne poseront pas de problème. Cependant, lorsqu'on les combine aux dividendes élevés que réclament les actionnaires, on peut peut-être y voir de l'âpreté au gain». [Doc. du Comité 002108, p. 4]

M^{me} Edlund a dit lorsqu'elle a comparu que Paxport n'avait pas une grande expérience dans le domaine de l'aménagement d'aéroports – elle note dans son rapport que Paxport est

une société qui possède peu d'actifs tangibles et a peu d'opérations réelles – ce qui, à son avis, mérite d'être pris en considération. [*Délibérations du Comité*, le jeudi 27 juillet, fascicule n° 7, 7:17-18]

Lorsqu'il a comparu devant le Comité, **M. Jack Matthews a admis qu'il n'avait aucune expérience dans l'exploitation ou le réaménagement d'aéroports, son seul travail dans le domaine des aéroports se bornant à la préparation de la proposition concernant l'aérogare 3.** Il a dit au Comité que, lorsqu'il a participé à des réunions pour rallier des appuis à la proposition de Paxport, il était presque invariablement accueilli par les mots : «Jack, qu'est-ce que tu viens faire dans le secteur aéroportuaire?» Sa seule réponse consistait à dire qu'il avait essayé sans succès de décrocher le contrat de l'aérogare 3. [Témoignage de M. Jack Matthews, *Délibérations du Comité*, le jeudi 21 septembre 1995, fascicule n° 22, 22:130]

Le rapport de M^{me} Edlund passe aussi en revue la situation financière des divers proposants. En ce qui concerne le groupe Matthews, on y note ce qui suit : «Depuis sa création en 1953, cette société n'a jamais enregistré de perte, mais elle est à peine rentable depuis deux ans et, au 31 décembre 1991, elle affichait une dette (dette courante et à terme) de près de 250 millions de dollars. [Doc. du Comité 002108; souligné dans le texte original]

M^{me} Edlund en a dit plus long au Comité à ce sujet : «Nous étions d'avis qu'elle [la situation financière de Matthews] était assez précaire à ce moment-là [...]. Essentiellement, cela nous tracassait un peu à cause de la situation économique qu'il y avait à l'époque. Nous ne pouvions prévoir une reprise marquée dans le secteur où le groupe évoluait, de sorte que cela nous tracassait un peu et, évidemment, cela s'est avéré». [*Délibérations du Comité*, le jeudi 27 septembre 1995, fascicule n° 7, 7:18]

Les inquiétudes de M^{me} Edlund étaient bel et bien fondées. Le groupe Matthews a déclaré faillite le 9 février 1994.²⁷

M^{me} Edlund a par ailleurs noté dans son rapport que Paxport réclamait une clause d'exclusivité «garantissant [à Paxport] que les vols ne seraient pas déroutés vers d'autres aéroports à moins que l'aéroport international Lester B. Pearson ne fonctionne à pleine capacité. La proposition d'ATDG ne contenait pas d'exigence similaire. Nous n'avons aucun moyen de savoir si ce genre de disposition est raisonnable ou acceptable aux yeux de Transports Canada.» [Doc. du Comité 002108, p. 4]

²⁷ Certaines personnes affirment que la faillite du groupe Matthews est directement imputable à la résiliation du contrat de l'aéroport Pearson, mais cela est loin d'être avéré. Des représentants du consortium ont dit à plus d'une reprise que le groupe Matthews n'aurait pas eu de rentrées entre octobre 1993 et février 1994. (M. Peter Coughlin : «... au cours des neuf premières années du bail [...] les associés de la Pearson Development Corporation n'auraient absolument rien eu.» [*Délibérations du Comité*, le mardi 12 septembre 1995, fascicule n° 17, 17:15])

M^{me} Edlund craignait que ce genre de disposition, qui aurait certes pour effet de garantir les sources de recettes de Paxport, ne crée en fait un monopole. [*Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:13] Elle aurait par ailleurs interdit l'expansion de l'aéroport de Hamilton (Mount Hope) – objectif qui figurait dans la stratégie gouvernementale de 1989 concernant l'avenir de l'aviation dans le sud de l'Ontario, dont étaient issus les projets de réaménagement des aéroports 1 et 2. [Communiqué de presse du Ministre n° 98/89, 18 août 1989]

(3) Évaluation financière : le rapport Gauvin

À la mi-novembre 1992, la sous-ministre des Transports a reçu une autre étude sur la proposition de Paxport émanant celle-là du sous-ministre adjoint aux finances et à l'administration de Transports Canada, M. Paul Gauvin. Il s'agissait d'une analyse comparative des conséquences financières pour l'État du réaménagement et de l'exploitation des aéroports 1 et 2 par Transports Canada et de l'agrément de la proposition de Paxport. [Lettre de M. Paul Gauvin à M^{me} Labelle en date du 13 novembre 1992, doc. du Comité 001520]

M. Gauvin a résumé ainsi les conclusions de son étude :

«Dans l'état actuel des choses, la proposition de Paxport est à coup sûr plus avantageuse financièrement pour l'État, **mais au prix de coûts très élevés pour les compagnies aériennes et les voyageurs.**» [Lettre de M. Paul Gauvin à M^{me} Labelle en date du 13 novembre 1992, doc. du Comité 001520; c'est nous qui soulignons]

En dépit des réserves formulées tant au sein de l'administration qu'en dehors, le gouvernement a retenu la proposition de Paxport. Une note de service du Conseil du Trésor contient cette phrase sibylline : «Les dés sont peut-être jetés.» [Note de service interne de Bill Cleevely à six fonctionnaires du Conseil du Trésor en date du 26 novembre 1992, doc. du Comité 001267]

Annnonce du choix de la proposition de Paxport, le 7 décembre 1992

Le premier indice dont a été saisi le Comité d'une participation directe du premier ministre Brian Mulroney à ce projet est une note qui lui était adressée par le greffier du Conseil privé, M. Glen Shortliffe. Datée du 16 novembre 1992, celle-ci faisait le point sur le processus de DP, **trois semaines avant l'annonce du choix de la proposition de Paxport.** M. Shortliffe écrivait ce qui suit au Premier ministre :

«Selon Transports Canada, il importe de tenir compte des facteurs suivants avant de poursuivre :

- la récession étant plus longue que prévu, et la situation actuelle dans l'industrie du transport aérien risquant d'entraîner une baisse du trafic, le besoin d'agrandissement des aérogares est différé de deux à trois ans, si bien qu'il n'est pas nécessaire de commencer les travaux de construction avant 1996.
- initialement, on avait pensé que la construction pourrait commencer l'année prochaine. Le ministère des Transports estime maintenant que les travaux commenceront au plus tôt en 1994, car il faudra au moins 12 mois pour négocier le bail. Paxport devra négocier de nouveaux baux avec les compagnies aériennes et les autres locataires des aérogares 1 et 2 et organiser le financement avant de signer le bail;
- les coûts des transporteurs aériens vont doubler la première année pour passer à 60 millions de dollars et seront multipliés par quatre dans les dix ans. Air Canada a demandé que le projet de réaménagement soit différé.
- une administration aéroportuaire locale (AAL) pourrait être établie pour Pearson. Les cinq présidents des administrations régionales, dirigés par le président de la municipalité régionale du Grand Toronto ont écrit à M. Corbeil pour l'informer de leurs intentions en ce sens. C'est l'AAL qui signerait le bail des aérogares 1 et 2, le cas échéant. Il est possible que la province fasse des pressions pour que le projet de réaménagement soit reporté jusqu'à la création de l'AAL.

Le promoteur retenu, Paxport, a déposé une proposition non sollicitée en vue d'amorcer les travaux plus tôt que prévu. En contrepartie d'un paiement nominal non précisé, elle toucherait les 20 à 30 millions de dollars de loyer des concessionnaires actuels pendant 40 ans contre 150 millions de dollars de travaux commençant dès l'an prochain. **Cette proposition laisse à désirer du point de vue de l'équité (des recettes de plus d'un milliard de dollars contre seulement 150 millions de dollars de travaux) et de ses répercussions fâcheuses sur les recettes publiques (la perte de recettes annuelles de l'ordre de 20 à 30 millions de dollars aurait un impact sur le déficit).** En outre, les recettes provenant des concessions constituent la «carotte» la plus efficace pour inciter le promoteur à achever les travaux. Si on les lui accorde d'emblée, **Paxport aura peu de raisons d'achever les travaux suivant des modalités convenant au gouvernement fédéral.** [Note de Glen Shortliffe au Premier ministre en date du 16 novembre 1992, doc. du Comité 002188]

Au bas de la note du Premier ministre du 16 novembre 1992 on trouve la note manuscrite suivante :

«Premier ministre : comme on peut le constater, les soumissionnaires ont peu de raisons de s'associer. Comme je vous l'ai dit jeudi dernier, j'envisage l'indemnisation des soumissionnaires.»

Nous voyons donc que trois semaines **avant** que le ministre des Transport n'annonce le choix de la proposition de Paxport, le Premier ministre savait : qu'il n'était pas nécessaire que les travaux commencent avant quatre ans; que la proposition de Paxport ferait quadrupler les coûts des compagnies aériennes; qu'Air Canada avait demandé le report du projet; que la province voulait qu'on attende la création, imminente, d'une AAL; et enfin, que l'arrangement n'était pas équitable (des recettes de plus d'un milliard de dollars contre seulement 150 millions de dollars de travaux), ce qui aurait des «répercussions fâcheuses sur les recettes publiques [...] et un impact sur le déficit).

En outre, le Premier ministre et le greffier discutaient de l'éventualité que les soumissionnaires s'associent - ce que les parties concernées ont dit, durant les audiences, n'avoir pas envisagé avant l'annonce du 7 décembre.

M. Shortliffe a donné au Comité une explication singulière de sa note manuscrite :

«Il arrive souvent que le premier ministre pose des questions au greffier. Dans ce cas-ci, je répondais à une question que m'avait posée le premier ministre Mulroney. En gros, les choses se sont passées ainsi : avant que cette note ne soit rédigée, j'avais informé verbalement le Premier ministre que la meilleure proposition qui émergeait du processus d'évaluation était en fait celle de Paxport. Il le savait parce que je l'en avais informé de vive voix.

Or, il se trouve que, quelques jours avant que la note de service ne soit rédigée, le Premier ministre assistait à une réception mondaine où il a rencontré Charles Bronfman. M. Bronfman... bien sûr, à ce moment-là, on n'avait pas annoncé le soumissionnaire gagnant; et M. Bronfman, d'après ce que je crois savoir, en a profité, à vrai dire, pour faire valoir au Premier ministre combien Claridge avait besoin de décrocher le contrat de réaménagement de l'aéroport Pearson.

À la suite de cette discussion, le lendemain matin, lorsque j'ai rencontré **le Premier ministre, ce dernier m'a demandé s'il serait possible, après l'annonce de la proposition gagnante, que les deux soumissionnaires s'associent afin que chacun ait sa part du gâteau.**» [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:65]

Et effectivement, plusieurs jours après «l'annonce de la proposition gagnante», les deux proposants se sont associés «afin que chacun ait sa part du gâteau». Les espoirs du Premier ministre s'étaient réalisés.

Il semblerait que le Premier ministre ait été à certains moments plus au courant du dossier que le ministre des Transports. M. Corbeil a dit au Comité en termes véhéments qu'il n'était absolument pas au courant de l'éventualité d'une fusion des parties jusqu'à ce que

celle-ci soit annoncée. [*Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:24]

Le témoignage de M. Corbeil montre aussi clairement que le greffier du Conseil privé n'a pas informé ni consulté le ministre des Transports lorsqu'il a envisagé des façons d'indemniser les promoteurs, comme le souhaitait le Premier ministre, dans l'éventualité où le projet de réaménagement serait annulé. [*Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:24]

Le 4 décembre 1992, soit trois jours avant l'annonce, M. Shortliffe adressait une autre note au Premier ministre. [Doc. du Comité 002184] Il y rappelle une fois encore que le réaménagement des aéroports risque d'imposer des coûts substantiels aux compagnies aériennes à un moment où l'industrie éprouve des difficultés financières. Il y fait également état des problèmes de financement de Paxport et en particulier de la possibilité que Paxport se ravise dans les semaines à venir et retire sa proposition. M. Shortliffe a écrit ce qui suit :

«On craint que Paxport ne soit pas en mesure de confirmer le financement de sa proposition, car il lui faut pour cela le consentement d'Air Canada, le principal locataire de l'aéroport 2, qui est contre le projet de réaménagement. Ainsi, il se pourrait très bien que, d'ici quelques semaines seulement, Paxport se ravise et retire sa proposition parce qu'elle serait irréalisable, étant donné la conjoncture actuelle dans l'industrie du transport aérien. Le gouvernement serait alors forcé d'envisager de reporter à plus tard l'ensemble du projet.»

M. Shortliffe a inséré un astérisque à cet endroit, avec le commentaire manuscrit suivant :

«PM : Le gouvernement pourrait cependant envisager d'autres solutions».

M. Shortliffe signale aussi dans cette même note qu'ATDG ne manquerait pas de faire valoir publiquement que le financement de sa propre proposition ne posait pas de problème.

Nous ne pouvons faire autrement que nous demander pourquoi, dans ces circonstances, le gouvernement a quand même décidé de retenir la proposition de Paxport. À la lecture de ces notes, on voit clairement que les fonctionnaires de Transports Canada non seulement avaient des réserves quant à l'opportunité de réaliser le projet à ce moment-là, mais, pis encore, avaient signalé les problèmes que poserait le choix de la proposition de Paxport de préférence à celle d'ATDG.

Le contenu de ces notes montre aussi clairement que le Premier ministre était tout à fait au courant de la situation. Pourtant, alors que le Premier ministre était tenu au courant par le greffier des préoccupations du ministère des Transports et du fait que le gouvernement pourrait être amené à remettre son projet, le ministre des Transports a dit au Comité qu'il n'avait jamais discuté de l'éventualité que le projet soit remis.

Le sénateur Bryden : Le 4 décembre, en tant que ministre responsable, aviez-vous discuté de la possibilité de remettre tout le projet à une date ultérieure?

M. Corbeil : Non, monsieur. [*Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:24]

Comme le sénateur Michael Kirby l'a dit durant le témoignage de M. Corbeil, «le ministre n'était pas dans la boucle». [*Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:78] Ce n'était pas le cas du Premier ministre.

IV. PROBLÈMES DE FINANCEMENT : LA GENÈSE DE MERGECO

Le 7 décembre 1992, le ministre des Transports, Jean Corbeil, annonçait que Paxport avait soumis la «meilleure proposition globale» en vue du réaménagement des aéroports 1 et 2. Cependant, ni cette annonce ni la lettre envoyée à Paxport à ce sujet ne souscrivent sans condition au projet de Paxport. Il était précisé dans les deux cas que Paxport devait fournir au gouvernement d'ici au 15 février 1993 des preuves suffisantes montrant qu'il était en mesure de réunir les capitaux nécessaires au financement de sa proposition. [Lettre de Victor Barbeau à Ray Hession, président, Paxport Management Inc., en date du 7 décembre 1992, doc. du Comité 001844]

Cette décision a eu pour effet de placer Paxport dans une position privilégiée. Même s'il n'était pas établi que la société était en mesure de concrétiser son projet, le gouvernement avait annoncé qu'il négocierait une entente avec elle et personne d'autre. Parallèlement, Claridge était forcée de s'entendre avec Paxport, faute de quoi elle devrait renoncer à l'avantage que présenterait pour elle le fait que les trois aéroports soient exploitées par elle ou par une société amie – ce qui était d'ailleurs, de l'aveu même de Claridge devant le Comité, l'unique raison pour laquelle elle avait pris un intérêt majoritaire dans l'aéroport 3.

Paxport n'a pas tardé à se rendre compte qu'elle n'arriverait pas à réunir les capitaux nécessaires. M. Jack Matthews a dit à M. Robert Nixon «qu'il avait parcouru Bay Street de long en large à la recherche de capitaux, qu'il s'était adressé aux banques, qu'il était allé voir les caisses de retraite, mais sans réussir à obtenir le financement qu'il recherchait». [Témoignage de M. Robert Nixon, *Délibérations du Comité*, le mardi 26 septembre 1995, fascicule n° 25, 25:72]

Les choses se sont ensuite précipitées durant les quelques jours de décembre 1992 où les deux soumissionnaires concurrents se sont entendus pour former une nouvelle société, Mergeco. Il reste que la façon dont ces deux sociétés en sont venues à s'associer demeure un mystère. Le Comité a entendu deux versions quelque peu différentes de l'origine de Mergeco, et les documents dont nous disposons jettent le doute sur les deux.

Selon l'ancien président de Paxport, M. Ray Hession, deux ou trois jours après l'annonce de la proposition retenue, un haut fonctionnaire de Transports Canada lui aurait suggéré «d'examiner les synergies possibles avec les propriétaires de l'aérogare 3». [Témoignage de Ray Hession, *Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:46, 44] Il était manifeste que c'était là l'idée que M. Hession se faisait de l'origine de Mergeco.

M. Hession a refusé d'identifier le haut fonctionnaire en question au moment où il a comparu devant le Comité, affirmant qu'il s'était engagé personnellement à ne pas divulguer son nom. [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:44, 46] Cependant, quelques mois plus tard, il a envoyé une lettre au conseil juridique du Comité, M. John Nelligan, dans laquelle il indiquait que c'était M^{me} Huguette Labelle, alors sous-ministre des Transports, qui lui avait fait cette suggestion. [Lettre de M. Hession à M. Nelligan en date du 9 novembre 1995]

Or, nous parlons là d'un dossier dont tous les fonctionnaires interrogés admettent qu'il était très important pour le gouvernement et dont les documents attestent qu'il était suivi de très près par le Bureau du Conseil privé. On a du mal à croire que, dans un dossier suivi d'aussi près, un haut fonctionnaire prendrait l'initiative de proposer aux deux seuls proposants d'explorer les «synergies» d'une fusion – à moins, bien sûr, d'en avoir reçu l'instruction ou d'être persuadé d'avoir la «bénédiction» de ses supérieurs.

Pour leur part, M. Peter Coughlin, président de Claridge Properties Ltd., et M. Don Matthews, président du groupe Matthews, ont témoigné que l'idée de la fusion remontait à un appel téléphonique de M. Matthews à M. Bronfman «le 10 ou le 11 décembre» durant lequel M. Bronfman aurait proposé une fusion des deux sociétés. [*Délibérations du Comité*, le mardi 12 septembre 1995, fascicule n° 17, 17:21] Dans sa lettre, M. Hession affirme que cet appel téléphonique était le résultat de la conversation qu'il avait eue avec M^{me} Labelle et que M. Matthews et lui avaient discuté pendant environ une heure des avantages de la suggestion de celle-ci. M. Matthews a dit qu'il ne se souvenait pas d'avoir parlé avec M. Hession d'une conversation que celui-ci aurait eue avec un haut fonctionnaire de Transports Canada; de fait, M. Matthews a affirmé qu'il avait délibérément évité d'informer M. Hession des discussions sur une fusion éventuelle parce que M. Hession «ne faisait pas partie de la boucle». [*Délibérations du Comité*, le mercredi 13 septembre 1995, fascicule n° 18, 18:110-111]

Cela ne veut pas dire pour autant que M. Hession n'a pas été franc avec le Comité. En fait, d'autres documents gouvernementaux appuient fortement sa propre version des événements. Un document intitulé «Notes d'une réunion sur le projet de réaménagement des aérogares de l'aéroport Lester B. Pearson» décrit une rencontre qui a eu lieu le jeudi 18 mars 1993 dans la salle de conférence du sous-ministre des Transports et à laquelle assistaient douze fonctionnaires du Ministère, notamment la sous-ministre, M^{me} Huguette Labelle, et

le négociateur en chef, David Broadbent. Dans la liste des «questions importantes» figure ceci :

«Il est manifeste que l'idée de la coentreprise émane du gouvernement (BCP/politiques).»

[Notes de réunion, doc. du Comité 00007]

Nous savons déjà bien sûr que le Premier ministre avait demandé au greffier du Conseil privé d'étudier cette possibilité avant même que les résultats de la DP ne soient annoncés. [Voir la note de M. Glen Shortliffe, greffier du Conseil privé, au Premier ministre en date du 16 novembre 1992, doc. du Comité 002188.]

Il est moins important de connaître le *comment* que le *pourquoi* de la fusion : le secret qui entoure son origine donne simplement à penser que toutes les parties concernées savaient qu'il se passait quelque chose de peu ordinaire.

M. Coughlin a dit au Comité que Claridge n'avait pris une participation majoritaire dans l'aérogare 3 que lorsque le gouvernement avait annoncé son intention de privatiser les aérogares 1 et 2. Il s'est exprimé ainsi : «Nous ne voulions pas avoir seulement une part du gâteau. Pour nous, l'exploitation des trois aérogares était nécessaire afin de diversifier nos risques dans les trois aérogares, de produire d'importants effets de synergie au chapitre du financement et de l'exploitation et d'accroître notre rendement». [*Délibérations du Comité*, le mardi 12 septembre 1995, fascicule n° 17, 17:12]

Le choix de la proposition de Paxport a donné à la société un droit d'une valeur certaine. M. Coughlin a indiqué sans ambiguïté ce que de Paxport avait à offrir dans les négociations avec Claridge : «Paxport donnait la possibilité de négocier l'exploitation des aérogares 1 et 2». [*Id.*, 17:28] Il a aussi dit que Claridge estimait que le droit de négocier le contrat des aérogares 1 et 2 valait entre 20 et 35 millions de dollars. [*Id.*, 17:30]

Ainsi, la simple attribution à Paxport du droit de négocier conférait à celle-ci un actif qui ne lui avait rien coûté hormis le coût du lobbying et de la réponse à la Demande de propositions. Et les résultats de la fusion étaient clairs comme de l'eau de source : Paxport restait dans le coup et les souhaits du Premier ministre se concrétisaient – tout le monde a eu «une part du gâteau».

Apparemment, le rôle de M. Hession à Paxport a changé après que Paxport fut sorti gagnant du processus de DP. Le 7 décembre 1992, M. Hession a «bénéficié d'un congédiement constructif» pour reprendre ses propres termes. [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:15] Cependant, quatre jours auparavant, M. Hession et Paxport avaient conclu une entente après-emploi aux termes de laquelle M. Hession toucherait 83 750 \$ par an le reste de sa vie durant (sa femme étant assurée d'une rente

annuelle à vie de 41 875 \$ s'il devait mourir avant elle), plus une prime de 120 000 \$ à la signature de l'accord de réaménagement de l'aéroport Pearson avec le gouvernement. [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:15]

Cette pension – assurément généreuse, d'autant plus que M. Hession n'a travaillé pour Paxport que **quatre** ans – fait actuellement l'objet d'un litige entre M. Hession et Paxport, et le Comité n'a donc pas pu en apprendre davantage à ce sujet lorsque M. Hession a témoigné. Cependant, à en juger par la défense déposée à la Cour, la Pearson Development Corporation et T1T2 Limited Partnership croyaient que la «pension» de M. Hession serait financée grâce à l'accord de réaménagement de l'aéroport Pearson conclu avec le gouvernement.

«En admettant que ces défendeurs [la Pearson Development Corporation et T1T2 Limited Partnership] aient jamais été liés par le Contrat, ce qu'ils nient absolument, le Contrat est devenu impossible à exécuter dès lors que le gouvernement fédéral a refusé de donner suite aux accords de l'aéroport. **Ces défendeurs ne pouvaient pas réaménager, exploiter ou administrer les aérogares 1 et 2. Le plaignant ne pouvait pas assurer les services prévus dans le Contrat. Le Contrat est donc devenu inexécutable sans que les défendeurs y soient pour quelque chose.** Les défendeurs étaient ainsi relevés de toute obligation aux termes du Contrat.» [Défense déposée pour le compte de la Pearson Development Corporation et de la T1T2 Limited Partnership auprès de la Cour de l'Ontario (Division générale), dossier n° 80004/94, par. 13; c'est nous qui soulignons]

Ce que M. Hession considère comme une pension - qui n'exige généralement pas de contrepartie en services puisqu'elle est accordée en contrepartie de services passés - était de toute évidence considéré par le consortium comme un des coûts de réaménagement, d'exploitation et d'administration des aérogares 1 et 2. Autrement dit, alors que M. Hession n'avait apparemment aucunement l'intention de fournir des services aux aérogares, le consortium entendait traiter ces paiements de pension comme des coûts d'entreprise, qui seraient alors passés en charges – c'est-à-dire récupérés à même les recettes de Pearson avant le calcul des bénéfices. C'était là le premier de toute une série d'arrangements, mis au jour par le Comité, au moyen desquels les membres du consortium avaient l'intention de détourner à leur profit une partie des recettes de l'aéroport le plus rentable du pays, en sus du taux de rendement qui avait été négocié avec le gouvernement.

Les contrats de lobbying de M. Doucet

Paxport s'est alors assuré les services d'un autre lobbyiste, M. Fred Doucet, lequel avait des atouts impressionnants : il était depuis longtemps un ami proche de M. Mulroney; il avait été chef de cabinet de M. Mulroney quand celui-ci était chef de l'opposition, puis conseiller principal lorsque M. Mulroney est devenu premier ministre. [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:54] M. Doucet s'est enregistré en tant que lobbyiste pour le compte de Paxport le 23 décembre 1992. Il a dit dans son témoignage que

ses contrats avec Paxport n'avaient été officiellement signés que le 1^{er} février 1993, mais qu'ils avaient pris effet fin décembre 1992. [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:69]

Il y avait deux contrats – un avec Paxport Inc., et l'autre avec Paxport International – aux termes desquels M. Doucet aurait touché plus de 2 millions de dollars sur une période de dix ans.²⁸ Le sénateur Grafstein a décrit les contrats en ces termes lorsque M. Doucet a comparu devant le Comité : «Il s'agit d'un contrat de dix ans. C'est un contrat ferme. Il n'offre aucune possibilité de réduction, de modification ou de variation, à quelque partie que ce soit». [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:94]

M. John Nelligan, le conseil juridique du Comité, a abondé dans le même sens : «Il ne contient aucune clause de modification ni de résiliation au cours de la période indiquée.» [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:95]

M. Doucet a nié avoir été embauché pour faire du lobbying pour le compte de Paxport dans les négociations du contrat qui se déroulaient en 1993. Il a admis simplement que ces contrats de 2 millions de dollars «n'allaient entrer en vigueur qu'au moment où la nouvelle équipe de gestion [...] allait arriver aux aéroports 1 et 2 de l'aéroport Pearson». [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:66]

Il a affirmé que le «contrat avec Paxport Incorporated [d'une valeur de 1 044 000 \$] était avant tout prévu pour donner des conseils sur les possibilités qui allaient s'offrir dans d'autres aéroports canadiens au fur et à mesure que le programme de transfert des administrations aéroportuaires progresserait pendant les dix années suivantes». [*Id.*, 16:58] Il a ensuite précisé que «la liste des aéroports canadiens pour lesquels il devait y avoir transfert des administrations comportait 25 noms; il devait y avoir 25 aéroports au Canada. À ce moment-là, si j'ai bonne mémoire, il n'y avait que Vancouver qui était passé entre les mains d'une administration aéroportuaire locale». [*Id.*, 16:66]

Pourtant, le gouvernement du Canada avait déjà annoncé, en avril 1992, la signature d'ententes relativement à des AAL pour chacun des aéroports internationaux de Vancouver, de Montréal, d'Edmonton et de Calgary. [Communiqués de presse datés d'avril 1992, doc. du Comité 0015] Autrement dit, en décembre 1992, il ne restait plus de grand aéroport

²⁸ Lorsqu'il a témoigné, M. Doucet a affirmé que la moitié des honoraires provenant d'un de ces contrats était destinée à une autre firme, appelée «Sagegate Incorporated». Il a dit que «les directeurs de Sagegate ont joué un rôle essentiel pour le réaménagement de l'aéroport international de Pittsburgh, ainsi que pour d'autres projets de réaménagement internationaux». [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:58] Or, une recherche n'a permis de trouver qu'une Sagegate Corporation, une société constituée en Ontario le 29 décembre 1992 – au moment même où les contrats de M. Doucet avec Paxport prenaient effet. Le seul dirigeant inscrit sur l'acte constitutif de la société est un certain Frank Salvati, de North York en Ontario, lequel a refusé de dire quoi que ce soit sur les activités de Sagegate lorsqu'il a été interrogé à ce sujet par les médias.

canadien à céder - ils relevaient déjà tous d'une AAL. **On est bien forcé de se demander pourquoi, à la veille d'élections générales et à une époque où la popularité des Conservateurs était au plus bas, Paxport aurait signé un contrat ferme de dix ans avec un lobbyiste conservateur connu en vue d'obtenir du gouvernement suivant – lequel serait selon toute probabilité libéral – la cession d'aéroports qui n'existaient pas.**

Aux dires de M. Doucet, le second contrat, avec Paxport International, d'une valeur de 960 000 \$, devait couvrir des services qui aideraient Paxport à «créer des marchés internationaux pour faire valoir et placer la technologie d'aménagement des aéroports de Paxport à l'étranger». [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:58]

Le moment où cet arrangement a été conclu est aussi pour le moins curieux. Les contrats de M. Doucet ont été signés à un moment où le groupe Matthews se trouvait dans une situation particulièrement précaire. Ce dernier avait réussi à décrocher le contrat de réaménagement, mais pour se rendre compte peu de temps après qu'il n'avait pas les moyens de financer son projet seul et devrait en céder la moitié (finalement plus que cela) à son concurrent. Un observateur désintéressé aurait pu penser que le groupe Matthews avait plus que jamais besoin des services d'un lobbyiste. **Il est quand même singulier qu'ils soient convenus de verser plus de 2 millions de dollars à l'un des lobbyistes les mieux placés du pays, mais n'aient pas fait appel à lui sur ce dossier crucial, particulièrement quand on sait, comme nous l'avons vu, que les contrats de M. Doucet étaient eux-mêmes subordonnés à la concrétisation des accords Pearson.**

Le Comité n'a rien pu apprendre sur la nature des activités de lobbying de M. Doucet pour le compte de Paxport. Celui-ci a produit des factures attestant qu'il réclamait à Paxport 10 000 \$ par mois en contrepartie de services de lobbying,²⁹ mais lorsqu'on lui a demandé s'il avait rencontré des ministres, des chefs de cabinet, ou M. Shortliffe, le greffier du Conseil privé, ou s'il avait communiqué avec eux, il répondit qu'il ne s'en souvenait pas. Il a admis uniquement avoir rencontré le chef de cabinet du ministre des Transports. [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:83] Et pourtant, M. Doucet était payé 120 000 \$ par année.

²⁹ M. Doucet a affirmé que ces factures concernaient «un contrat que notre entreprise avait signé le 4 mai 1992 avec deux entreprises de construction qui étaient des filiales de *Matthews Contracting Incorporated Limited, Coolsaet of Canada Limited* et *Construction Angkor Incorporated* en vue d'obtenir leur aide pour faire valoir le réseau routier national». [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:56] Cela n'explique pas pourquoi les factures portaient le nom de «Paxport Inc.» – d'autant plus que, comme les avocats de Paxport et de Claridge l'ont dit à maintes reprises au Comité, il était interdit aux partenaires du consortium de s'exposer à un passif réel, conditionnel ou autre, qui ne serait pas lié directement ou indirectement à l'exploitation et au réaménagement des aérogares de l'aéroport Pearson. [Voir le mémoire soumis au Comité par MM. Coughlin, Vineberg et Spencer en date du 8 septembre 1995.] Par conséquent, soit Paxport avait des activités interdites (si elles étaient effectivement sans rapport avec l'aéroport Pearson), soit les activités de M. Doucet ayant fait l'objet de factures à Paxport Inc. concernaient effectivement l'aéroport Pearson. C'est l'un ou l'autre.

Impossible à financer : le rapport de Deloitte & Touche du 2 mars 1993

À la mi-janvier 1993, le gouvernement a retenu les services de la firme comptable bien connue Deloitte & Touche pour le conseiller sur la capacité de Paxport d'assurer le financement de son projet de réaménagement des aéroports 1 et 2. [Rapport Deloitte & Touche en date du 2 mars 1993, doc. du Comité 00190, p. 1]

En février 1993, les divers membres du consortium Paxport s'étaient engagés à fournir plus de 57 millions de dollars de capital, mais 4 426 775 \$ seulement avaient été avancés.³⁰ Ce qui inquiétait en particulier M. Stehelin, l'associé de Deloitte & Touche chargé du dossier, c'étaient les 20 millions de dollars qui devaient provenir du groupe Matthews. Les documents fournis au Comité contiennent une note de M. Stehelin en date du 11 février 1993 destinée à son dossier Paxport faisant état d'une conversation téléphonique qu'il avait eue le matin même avec M. Don Matthews. M. Stehelin avait demandé à M. Matthews de lui fournir des précisions sur une déclaration selon laquelle le groupe Matthews avait conclu une entente distincte avec une de ses sociétés affiliées en vue de financer 20 millions de dollars qui seraient investis à la date de la cession. La note de M. Stehelin décrit bien la réponse de M. Matthews.

«M. Matthews m'a répondu qu'ils avaient pris les dispositions nécessaires pour le financement et que c'est ce que la lettre disait, et qu'il ne devrait donc pas y avoir de problème. Je lui ai dit qu'on nous avait demandé de nous prononcer sur les fonds qui seraient à la disposition de Paxport par le biais du groupe Matthews à la date de la cession. J'ai précisé qu'il devrait présumer que nous agissions en tant que vérificateur et qu'il était par conséquent important que nous puissions nous convaincre que Paxport disposerait effectivement des fonds en question.

M. Matthews m'a demandé si je voulais sous-entendre qu'il ne disait pas la vérité. Je lui ai répondu que la question n'était pas là et qu'il s'agissait tout simplement pour nous d'établir de manière indépendante si Paxport pouvait compter sur les 20 millions de dollars en question.

Après une brève discussion, je lui ai dit : l'idéal serait que la Banque Royale, qui a confirmé que vous aviez un crédit de fonctionnement à huit chiffres, nous confirme que Paxport disposera de 20 millions de dollars lorsque certaines conditions convenables seront remplies, par exemple lorsque votre proposition relative aux aéroports 1 et 2 sera agréée. Il ne m'a rien répondu. Il m'a demandé mon nom et mon numéro de téléphone et m'a dit que quelqu'un me rappellerait.» [Note de M.

³⁰ Il importe à cet égard de se rappeler que Paxport souhaitait que les travaux commencent à la fin d'avril 1993, objectif qu'elle avait souvent mentionné. [Voir par exemple la note de Transports Canada intitulée «Notes de la réunion du 15 décembre 1992», doc. du Comité 000366, dans laquelle on dit que MM. Hession et Matthews avaient dit qu'ils espéraient voir la première pelletée de terre d'ici le 30 avril 1993, mais admettaient que cela serait peut-être difficile.]

Paul Stehelin destinée au dossier Paxport en date du 11 février 1993, doc. du Comité 00188]

En fait, comme le Comité l'a découvert, M. Matthews savait très bien d'où proviendraient les 20 millions en question. Le 10 juin 1992 – tandis qu'elle préparait sa réponse à la Demande de propositions, Paxport et le groupe Matthews avaient conclu une entente avec Allders International Canada Limited aux termes de laquelle Allders acceptait d'avancer 15 millions directement au consortium et de prêter par ailleurs 20 millions de dollars à Paxport Investments Ltd. Les modalités de ce prêt présentent un intérêt particulier dans la mesure où, dans l'éventualité d'un défaut de paiement de Paxport Investments Ltd., Allders aurait reçu les actions que celle-ci possédait dans Paxport, ce qui aurait alors donné à Allders le contrôle des aéroports 1 et 2.

Dans une lettre adressée à M. Barbeau, M. Stehelin donne un aperçu des états financiers du groupe Matthews et fait remarquer ce qui suit :

«D'après les données financières que nous avons en mains au 30 novembre 1992, nous n'avons pas été en mesure de déterminer si le groupe Matthews pourrait financer les 20 millions de dollars si ce n'était de l'entente conclue avec Allders International Canada.» [Lettre de M. Stehelin à M. Barbeau en date du 22 février 1993, doc. du Comité 00196]

M. Stehelin à l'époque, comme nous lorsque nous avons étudié les accords, avait été consterné par cette entente, et ce, pour plusieurs raisons. Premièrement, Allders exploitait des boutiques hors taxes et aurait bénéficié d'un bail de 25 ans pour leur exploitation aux aéroports 1 et 2. M. Stehelin a dit lorsqu'il a comparu que la perspective qu'un important locataire ait une participation majoritaire dans l'aéroport lui était apparue très préoccupante.

Deuxièmement, il était précisé dans la Demande de propositions que seules les sociétés canadiennes contrôlées de fait par des Canadiens pouvaient soumettre une proposition. C'était là une restriction que M. Hession avait obtenue de haute lutte pour le compte de Paxport pour écarter la British Airports Authority. [Voir la Demande de propositions, mars 1992, p. 37]

Allders International Canada Limited appartient à 51 p. 100 à Agra Industries, une société canadienne, et à 49 p. 100 à Allders PLC, une société britannique. Cependant, comme l'a dit M. Stehelin, personne ne savait vraiment si Allders International Canada

Limited était contrôlée par des Canadiens ou par la société britannique.³¹ [*Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:24-25]

Il n'est pas sans intérêt de se demander quelle aurait été la réaction du Comité d'évaluation s'il avait été au courant de l'entente Paxport-Allders. Comme les documents précités le montrent, le groupe Matthews était très réticent à dévoiler les modalités de cette entente.

Le 2 mars 1993, Deloitte & Touche publiaient leur rapport. **Leurs conclusions étaient sans équivoque : ils ne pouvaient pas garantir au gouvernement que Paxport pouvait financer son projet.**

Ils ont fait les observations suivantes :

«Au moment où a paru la Demande de propositions et où on a reçu les réponses, on s'attendait que Paxport soit en mesure de financer le projet d'emblée. À notre avis, Paxport ne peut pas actuellement assurer le financement de la totalité du projet.

Ce fait est implicite dans leur proposition de financement du projet par étapes.»
[Rapport de Deloitte & Touche en date du 2 mars 1993, doc. du Comité 00190, p. 3]

Le rapport contient les conclusions suivantes :

«Sur la foi de nos travaux jusqu'à maintenant, il semble que **l'intention initiale exprimée dans la Demande de propositions ait été quelque peu modifiée par Paxport, celle-ci ayant besoin de financer son projet une étape à la fois.** La composition du consortium a beaucoup changé depuis le dépôt de la proposition, et le Ministère n'a pas encore reçu le détail de ces changements. Il semble cependant que la majeure partie des capitaux nécessaires à la réalisation de la première étape seraient disponibles. S'il est fort probable qu'on réussirait à financer la première phase au moyen d'emprunts, cela dépend cependant beaucoup de la résolution de problèmes encore non surmontés par Paxport. Il reste aussi à éclaircir certaines interrogations quant aux hypothèses concernant le rôle de l'État.

Tant que ces questions ne sont pas réglées, en particulier celles dont la résolution dépend de Paxport, nous ne pouvons pas garantir à l'État que ce projet peut être financé.» [Rapport de Deloitte & Touche en date du 2 mars 1993, doc. du Comité 00190, p. 6; c'est nous qui soulignons]

³¹ D'ailleurs, on a communiqué au Comité des documents du gouvernement selon lesquels la société mère britannique, Allders LTD (PLC), aurait par la suite acheté en totalité ou en partie la participation d'Agra Industries dans TIT2 Limited Partnership. Voir *The Matthews Enigma*, doc. du Comité 001109.

Le rapport de Deloitte & Touche a été un véritable pavé dans la mare. Le lendemain, le 3 mars 1993, des représentants de Paxport (M. Ray Hession, M. Jack Matthews et M. Peter Kozicz) ont rencontré la sous-ministre des Transports, M^{me} Huguette Labelle, M. Keith Jolliffe, M. Green et le chef de cabinet du ministre des Transports, M. Richard LeLay. Selon la note de Transports Canada contenant le compte rendu de cette réunion, M. Hession aurait dit que Transports Canada avait fait appel aux mauvaises personnes (Deloitte & Touche). On y lit ce qui suit :

«M. Hession a remis à la SM une lettre à signer adressée à Paxport disant que les fonctionnaires de TC avaient reçu pour instruction d'amorcer les discussions le 4 mars.

- La SM a refusé d'accepter la lettre et a dit qu'elle n'aurait jamais pensé que M. Hession deviendrait un jour son adjoint de direction!! En outre, TC n'a pas l'intention de se laisser bousculer. Paxport devrait communiquer avec Deloitte & Touche vendredi après quoi TC demanderait des instructions aux politiques. [Note intitulée «Téléconférence entre Driedger/Heed/Desmarais et Barbeau/Jolliffe», 4 mars 1993, doc. du Comité 00189]

La note contient plusieurs autres observations, notamment les suivantes :

«- Le SMA a l'impression que Shortliffe est en train d'orchestrer quelque chose, mais ne sait pas exactement de quoi il retourne.

- Les lobbyistes s'activent.

- Beaucoup de menaces à peine voilées durant la réunion. [Note intitulée «Téléconférence entre Driedger/Heed/Desmarais et Barbeau/Jolliffe», 4 mars 1993, doc. du Comité 00189]

M. Shortliffe a refusé de répondre au Comité lorsqu'on l'a interrogé sur le sous-entendu contenu dans la note au sujet de ses activités. [Témoignage de M. Glen Shortliffe, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:81-82]

Que ce soit le fait des lobbyistes, de ce que M. Shortliffe «orchestre» ou d'autres contacts, le Premier ministre a été mis au courant à la vitesse de l'éclair de cette conférence, et en particulier des préoccupations de M. Matthews. Le 5 mars 1993, M. Shortliffe adressait une note au Premier ministre dans laquelle il décrivait en détail les réserves de Deloitte & Touche, en faisant ressortir leur conclusion que, «tant que ces questions ne sont pas réglées, nous ne pouvons pas garantir à l'État que ce projet peut être financé.» [Note de M. Glen Shortliffe au Premier ministre en date du 5 mars 1993, doc. du Comité 002191; souligné dans le texte original]

M. Shortliffe a décrit en détail la position de M. Matthews telle que celui-ci l'avait exposée durant la réunion, précisant notamment ce qui suit : «M. Matthews se demande pourquoi il faut établir la capacité de financement à ce moment-ci. Il affirme que c'est la faute du gouvernement fédéral si Paxport n'a pas fait beaucoup de progrès de ce côté-là. En ne le déclarant pas sans ambiguïté vainqueur dans le processus de DP, le gouvernement a compromis la crédibilité de Paxport et nuit à ses négociations avec Air Canada» [Note de M. Glen Shortliffe au Premier ministre en date du 5 mars 1993, doc. du Comité 002191]

L'information communiquée par M. Shortliffe au Premier ministre était à jour : il a signalé dans sa note une rencontre que Paxport avait eue le jour même avec Deloitte & Touche. Il a ensuite noté que la question de la capacité de financement pourrait aboutir à une impasse et qu'on avait demandé à Transports Canada de penser à des solutions de rechange, le cas échéant.

Dans une note manuscrite en bas de page, M. Shortliffe a ajouté :

«Premier ministre : j'ai eu certaines conversations au sujet de ce dossier dont je vous ferai part de vive voix. GS.»

Lorsqu'il a comparu, M. Shortliffe a dit, «D'après ce dont je me souviens, je crois que la note manuscrite portait sur certaines discussions qui se tenaient à ce moment-là au sujet des perspectives de Mergeco». [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:68]

Effectivement, Paxport a résolu ses problèmes de financement par le biais d'un fusionnement avec Claridge dont «la bourse bien garnie» a été vue par Deloitte & Touche, dans leur rapport du 17 août 1993, comme une réelle garantie de la capacité de financement. [Rapport de Deloitte & Touche du 17 août 1993, doc. du Comité 00098]

Selon la solution Mergeco, les trois aéroports de l'aéroport le plus achalandé au Canada auraient relevé d'une seule entité privée. Tous les arguments de M. Hession s'opposant au monopole — formulés lorsque Paxport a voulu s'assurer le projet de réaménagement aux dépens de Claridge — ont soudain perdu leur importance, cédant la place à un débat sur la «synergie» que créerait le regroupement des trois aéroports entre les mains d'une seule entité. **Encore une fois, on se souciait fort peu de l'augmentation des coûts pour les voyageurs.**

Préoccupations du Secrétariat du Conseil du Trésor

Le Secrétariat du Conseil du Trésor s'est aussi mis de la partie. Ses nombreuses notes de service témoignent de ses grandes craintes concernant l'avancement du projet. Le 12 mars 1993, M. Mel Cappe, alors sous-secrétaire de la Direction des programmes au Conseil du Trésor, a envoyé une note de service à M. Ian Clark, secrétaire du Conseil du Trésor à l'époque. (M. Cappe a expliqué à l'intention du comité que le poste de M. Clark est de niveau sous-ministériel.) La note de service trace les grandes lignes du processus et décrit ensuite comment Paxport et Claridge ont conclu un «mariage de raison» pour protéger leurs intérêts divers. [Note de service de M. Mel Cappe à M. I.D. Clark du 12 mars 1993, doc. du Comité 00304]

M. Cappe passe en revue le rapport de Deloitte & Touche :

«Le rapport de Deloitte & Touche est très clair. Paxport n'est pas conforme à la DP. Des réunions ultérieures avec Transports Canada, Paxport et Deloitte & Touche n'ont permis de résoudre aucune des questions soulevées dans le rapport.

[...]

Les porte-parole de Paxport (MM. Hession et Matthews) ont rencontré M^{me} Labelle la semaine dernière et se sont montrés vivement indignés devant ce qu'ils considéraient être les atermoiements de bureaucrates.

Ils ont mis en doute la crédibilité de tout le monde, y compris Deloitte & Touche. Ils craignent également de ne pas être pris au sérieux par Air Canada tant que Transports Canada ne les aura pas désignés comme étant «le promoteur».

Depuis la semaine dernière, Paxport a intensifié ses pressions par le biais du Cabinet du premier ministre et de certains ministres.

[Note de service de M. Mel Cappe à M. I.D. Clark du 12 mars 1993, doc. du Comité 00304]

Lors de son témoignage, M. Cappe a expliqué en ces termes sa déclaration à l'effet que Paxport n'était pas conforme à la DP : «[Paxport] n'était pas conforme à la demande de propositions, en ce sens que le gouvernement n'était pas en mesure de conclure la transaction en fonction de la proposition dont il était saisi, parce que Deloitte & Touche avaient émis des doutes quant à sa viabilité financière». [*Délibérations du Comité*, le mardi 22 août 1995, fascicule n° 14, 14:22]

M. Cappe signale n'avoir pas eu personnellement connaissance de pressions exercées sur le personnel du premier ministre ou sur des ministres, mais précise que sa déclaration reflète ce qui se dégageait des échanges avec les collègues «d'autres ministères, des organismes centraux pour discuter de l'évolution du dossier. Effectivement, durant ces

discussions, nous nous serions tenus au courant de ce qui se passait». [*Délibérations du Comité*, le mardi 22 août 1995, fascicule n° 14, 14:28]

Sa note de service décrit ensuite l'état de la question :

«Le rapport de Deloitte & Touche est sans doute déjà du domaine public. Il serait maintenant très difficile de justifier des négociations avec Paxport en tant que source unique.» [Note de service de M. Mel Cappe à M. I.D. Clark du 12 mars 1993, doc. du Comité 00304; souligné dans le document original]

Ce paragraphe laisse perplexe : après le processus de DP, pourquoi la négociation en fonction d'une source unique soulèverait-elle des difficultés? Le témoignage de M. Cappe apporte des éclaircissements :

«[N]ous étions d'avis que la proposition [de Paxport] n'était pas conforme. [...] le gouvernement ne faisait que consulter Paxport, dans la mesure où celui-ci avait fait la meilleure proposition pour savoir s'il pouvait surmonter l'obstacle, s'il pouvait, si vous préférez, se conformer, après quoi on entamerait les négociations.

Nous précisons dans cette note que si l'on envisageait de négocier avec Paxport en tant que source unique, on s'exposerait à des critiques sévères, parce que l'autre proposition était toujours à l'étude. Le Airport Terminals Group [Claridge] n'avait pas retiré sa soumission à ce stade. [*Délibérations du Comité*, le mardi 22 août 1995, fascicule n° 14, 14:30]»

En d'autres mots, Deloitte & Touche (Paxport en fait, le cabinet Deloitte & Touche n'étant finalement que le malheureux messenger) avaient placé le gouvernement dans une situation difficile : une fois révélé que Paxport ne pouvait pas se conformer à la demande de propositions, le gouvernement ne pouvait pas entamer les négociations avec la société sans violer le processus. La position du gouvernement était rendue en outre intenable par la présence tranquille de Claridge dont la proposition (qui «était toujours à l'étude» en attendant que l'on reconnaisse que Paxport ne pouvait pas assurer le financement), servait, de façon subtile, à assurer le respect du processus de la demande de propositions.

Telle était justement la situation qu'attendait Claridge. À la mi-décembre 1992, lors d'une discussion avec le sous-ministre des Transports, Claridge était convaincu que Paxport serait incapable de financer le réaménagement; elle se proposait donc de suivre de près le cours des événements et de prendre des mesures judiciaires si la proposition changeait.

[Feuille d'accompagnement de fax de M. Michael Farquhar à M. Chern Heed du 17 décembre 1992, doc. du Comité 001540]³²

En fait, le gouvernement avait le choix entre quatre options : 1) commencer à négocier avec Paxport et s'exposer à une poursuite; 2) déclarer Paxport incapable de respecter la condition du financement et entreprendre des négociations avec Claridge, en tant que deuxième meilleur proposant; 3) amener Claridge à s'associer avec Paxport; 4) attendre la création d'une AAL et faire comme avec les autres grands aéroports canadiens.

Une note de service du Conseil du Trésor présente un résumé succinct de la situation :

«Ce dossier est extrêmement embrouillé et, à notre avis, il est peu probable qu'un contrat de construction soit passé d'ici six mois. Dans l'ensemble, nous préférierions attendre qu'une AAL soit créée à l'aéroport Pearson et que le ministère des Transports lui transfère rapidement la responsabilité du réaménagement des aérogares et la construction des nouvelles pistes (un autre problème éventuel). C'est d'ailleurs ce qui se passe à Vancouver, où l'AAL est en train d'agrandir l'aérogare et de construire une piste». [Note de service de M. Mel Cappe à M. I.D. Clark du 12 mars 1993, doc. du Comité 00304]

Tentative de fusion entre la proposition de Paxport et la bourse de Claridge

Pourquoi le gouvernement s'est-il donné tant de mal pour conserver Paxport comme joueur? La seule réponse offerte au cours des audiences est que le gouvernement préférerait la proposition de Paxport à toute autre. Cependant, comme nous le verrons plus loin, l'accord final s'éloigne beaucoup de la proposition de Paxport, situation qu'ont reconnue les négociateurs du gouvernement même avant que ne se termine la phase de «consultation» pour laisser place aux «négociations». (Pour entreprendre les négociations, les parties devaient attendre que Paxport ait prouvé au gouvernement sa capacité de financement; en attendant, elles pouvaient uniquement se consulter.) Voir p. ex. le témoignage de M. Mel Cappe, *Délibérations du Comité*, le mardi 22 août, fascicule n° 14, 14:41, 44-45].

Le négociateur en chef pour le gouvernement, M. David Broadbent, a envoyé, selon ses propres termes, une «mise en garde» à M. Shortliffe, le 18 mars 1993, avant un dîner qui devait réunir MM. Broadbent et Matthews :

³² Telle était en fait la stratégie originale de Claridge en date du 7 décembre 1992 : espérer que le gouvernement imposerait des conditions financières suffisamment sévères pour que Paxport soit dans l'impossibilité de les respecter; le gouvernement passerait alors à la deuxième meilleure proposition, soit celle de Claridge. [Voir le témoignage de M. Harry Near, *Délibérations du Comité*, le mercredi 23 août 1995, fascicule n° 15, 15:99, et fax de M. Near à M. Glen Shortliffe du 7 décembre 1992, à 8 h 12, doc. du Comité 002218]

«La réunion Bronfman-Matthews pourrait créer un champ de mine :

1. Il semble impossible d'allier la substance de la proposition Paxport et le financement Claridge. Des changements s'imposeraient qui amoindrieraient l'ampleur des travaux de réaménagement ou nécessiteraient une somme supérieure à la soumission envisagée par Claridge. Les modifications effectuées afin de permettre la fusion des propositions portera manifestement atteinte à l'intégrité du système de DP, ce dont il y a peut-être lieu de s'inquiéter». [Note de service de M. David Broadbent à M. Glen Shortliffe du 18 mars 1993, doc. du Comité 2179]

Après le dîner d'affaires, M. Broadbent a envoyé une autre note de service à M. Shortliffe :

«Il est très clair qu'un ouvrage de 800 millions de dollars ne peut pas être financé par un accord d'une valeur de 500 millions de dollars avec Claridge. Il faut donc réduire les travaux ou augmenter le niveau de financement de Claridge (ou combiner ces mesures) si l'on veut éviter d'imposer d'entrée de jeu des frais supplémentaires aux compagnies aériennes.

En ce qui concerne la situation Mergeco, Jack était très heureux de la situation. Les craintes d'un guet-apens dressé par Claridge sont sans fondement. **Jack dit pouvoir facilement faire modifier l'entente Mergeco pour que les deux parties s'associent à parts égales, si le gouvernement veut accepter dès maintenant l'offre de Claridge.** [Note de service de M. David Broadbent à M. Glen Shortliffe, doc. du Comité 000912; souligné dans le document original]

Il était donc «très clair» pour tous que le plan original ne pourrait pas fonctionner; l'on ne pouvait pas se contenter d'ajouter à la proposition de Paxport la «bourse bien garnie» de Claridge et poursuivre son petit bonhomme de chemin. En fait, M. Matthews était tout à fait disposé à collaborer «si le gouvernement veut accepter dès maintenant l'offre de Claridge», puisqu'il avait maintenant la garantie d'une participation à 50 p. 100.

On ne peut s'empêcher de conclure que la seule raison pour laquelle on conservait la proposition de Paxport était que cela garantissait à la société une participation à parts égales dans l'accord. En fait, l'accord se rapprochait davantage de la proposition de Claridge que de celle de Paxport. Le gouvernement aurait tout aussi bien pu retenir la proposition de Claridge, sauf que Paxport aurait alors été écarté.

Objections venues d'ailleurs

Les promoteurs ont également réussi à réduire au silence Transports Canada. Le sous-ministre adjoint responsable des aéroports, M. Victor Barbeau, n'a pas été nommé négociateur en chef pour l'accord par M^{me} Huguette Labelle, sous-ministre des Transports, en partie parce que M. Jean Corbeil, ministre des Transports, a signalé à cette dernière que

«diverses personnes avaient indiqué qu'elles avaient l'impression que M. Barbeau ralentissait le processus». [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:9]. Selon M^{me} Labelle, le ministre lui aurait dit que certains avaient l'impression «qu'il ne conviendrait peut-être pas de demander à M. Barbeau». [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:41]

Finalement, les démarches entreprises contre M. Barbeau se sont intensifiées à un tel point que celui-ci a «reçu congé pour aller cultiver son jardin» du 27 mai jusqu'au début juillet 1993. À son retour, il a repris son poste de sous-ministre adjoint chargé des aéroports, mais il ajoute : «je ne me suis pas occupé de l'évolution du dossier [le réaménagement des aéroports 1 et 2]». [Témoignage de M. Barbeau, *Délibérations du Comité*, le mardi 11 juillet 1995, fascicule n° 2, 2:26].

M^{me} Labelle sait précisément qui étaient les responsables des démarches contre M. Barbeau : il s'agissait des «gens qui négociaient avec nous de l'autre côté de la table». [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:9] Ces personnes ne se gênaient pas pour faire connaître leur opinion de M. Barbeau. M^{me} Labelle affirme dans son témoignage que M. Glen Shortliffe lui a «indiqué qu'on s'était plaint à lui aussi que M. Barbeau freinait le processus». [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:38]

M^{me} Labelle exprime un appui sans équivoque pour M. Barbeau qu'elle considère comme «un fonctionnaire très professionnel qui travaillait très fort à l'époque [...] je n'étais pas d'accord avec ce point de vue [celui exprimé par le ministre des Transports]». [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:9] M^{me} Jocelyne Bourgon, qui a remplacé M^{me} Labelle comme sous-ministre des Transports, affirme également avoir pleine confiance dans le professionnalisme et le zèle de M. Barbeau. [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:65-66]

Aucun témoin n'a mis en doute les motifs qui ont incité M. Barbeau à exprimer des réticences concernant le rythme et l'évolution des négociations relativement aux aéroports 1 et 2. Mais il est clair que les préoccupations qu'il exprimait ont fait de lui, aux yeux des promoteurs, un obstacle à une résolution rapide et acceptable de la situation. Le plus inquiétant cependant reste que l'on ait tenu compte de ces vues, de sorte qu'un haut fonctionnaire, extrêmement bien informé au sujet des besoins de l'aéroport Pearson, a été retiré du dossier (et, pour un temps, du ministère) afin d'accélérer la conclusion des négociations.

Au même moment, des hauts fonctionnaires du Conseil du Trésor, s'obstinaient à vouloir faire entendre leurs préoccupations, sans se soucier du fait que nul ne semblait prêter l'oreille. Le 1^{er} avril 1993, M. Gershberg a envoyé une note de service à M. Cappe pour faire le point sur ce qu'il a décrit (encore une fois) comme étant «un dossier extrêmement

embrouillé», et ce en vue d'une réunion convoquée par M. Shortliffe pour revoir les éléments du dossier des aérogares 1 et 2. [Note de service de M. Sid Gershberg à M. Mel Cappe du 1^{er} avril 1993, doc. du Comité 00298] M. Gershberg conclut ainsi sa longue note de service :

«Le ministre des Transports a lié les mains du Ministère en optant pour l'approche du «soumissionnaire privilégié». C'est la Justice qui devrait guider le Ministère afin de lui épargner des poursuites». [Note de service de M. Sid Gershberg à M. Mel Cappe du 1^{er} avril 1993, doc. du Comité 00298; c'est nous qui soulignons]

Les notes de service du Conseil du Trésor à l'époque soulignent l'importance qu'attachait le gouvernement au processus de sélection; le Conseil du Trésor jugeait en effet essentielle la protection de l'intégrité du processus d'adjudication. Les notes de service révèlent également que les hauts fonctionnaires du Conseil du Trésor craignaient que ce souci ne les empêche de s'attaquer aux vrais écueils de l'accord. Une note de service souligne que le processus d'adjudication a pris une importance extrême aux dépens des priorités habituelles, particulièrement les questions de personnel. [Note de service interne de M. Mel Cappe à l'intention de sept hauts fonctionnaires du Conseil du Trésor du 5 avril 1993, doc. du Comité 001103]

Participation du Bureau du Conseil privé

L'ombre du Bureau du Conseil privé (BCP) porte sur bon nombre des documents gouvernementaux de l'époque touchant l'aéroport Pearson. De nombreuses notes de service font état des réunions convoquées par M. Glen Shortliffe afin de faire le point sur les négociations ou les discussions sur le réaménagement des aérogares 1 et 2. Selon M. Broadbent, lui et M^{me} Labelle, sous-ministre des Transports, se rendaient presque toutes les semaines à des réunions convoquées à la salle de conférence de Glen Shortliffe. [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:89]

Les hauts fonctionnaires du Conseil du Trésor se sont plaints à plusieurs reprises du fait que M. Broadbent traitait directement avec les porte-parole du Conseil privé au lieu de suivre les filières habituelles. Il était par conséquent très difficile, ont-ils souligné à maintes reprises, pour le Conseil du Trésor de se tenir au courant du dossier. [Voir la note de service de M^{me} Carole Swan à M. Sid Gershberg du 29 avril 1993, doc. du Comité 00269; voir aussi la note de service de M^{me} Carole Swan à M. Sid Gershberg du 10 mai 1993, doc. du Comité 00272]

Finalement, M. Broadbent a été remplacé comme négociateur en chef, à la fin de son mandat, par un haut fonctionnaire du Bureau du Conseil privé, M. Bill Rowat³³.

M. Shortliffe n'estime pas avoir consacré une part de temps démesurée au dossier Pearson. Pour justifier les nombreuses réunions et l'étroite surveillance exercée, il affirme que : «le premier ministre Mulroney avait fait de ce dossier une de ses priorités qu'il voulait voir réalisée avant de quitter son poste». [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:78] De plus, on a attribué en partie la proche participation du BCP aux pressions intenses exercées pour qu'un accord soit conclu au plus tard le 31 mai ou le 1^{er} juin 1993. (Cela n'explique pas entièrement toutefois pourquoi le BCP a envoyé M. Rowat pour conclure l'accord, puisque son mandat de négociateur en chef a commencé seulement après que la date cible du 1^{er} juin soit passée sans qu'un accord ne soit conclu.)

M. Shortliffe affirme dans son témoignage que le délai du 31 mai/1^{er} juin découlait du désir du premier ministre Mulroney de conclure l'accord avant de passer les rênes à son successeur. [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:74] M. Broadbent a affirmé lors de sa comparution qu'il était tout à fait conscient du vif intérêt du Premier ministre concernant l'état du dossier : «M. Shortliffe a dit que le premier ministre souhaitait vivement que ce dossier se règle, et qu'il s'informait fréquemment de son état d'avancement». [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:103]

Une note de service interne de Paxport en date du 15 avril 1993, dont copie a été envoyée à M. Broadbent par M. Jack Matthews, fait état de certains «commentaires intéressants» formulés par M. Wayne Power, porte-parole de Transports Canada, lors d'une réunion avec un représentant de Paxport :

«Wayne a fait des commentaires intéressants. Il s'est plaint du rythme des négociations et de l'ingérence politique dans le processus. Il déplore que le

³³ M. Broadbent a dit très franchement - au Comité et, à l'époque, à M^{me} Labelle et à M. Shortliffe — qu'il avait dû travailler dans des conditions inacceptables : «le Groupe des aéroports ne m'a pas donné le soutien que j'avais escompté». [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:98-99] Le point de vue de M^{me} Labelle était tout autre; après avoir signalé que le Ministère avait autant que possible répondu aux demandes de M. Broadbent, mais que certaines de celles-ci étaient déraisonnables [8:42], elle décrit comme suit les événements entourant le non-renouvellement du contrat du négociateur en chef :

«M. Broadbent avait été embauché pour une période qui devait se terminer à la mi-juin [...] lorsqu'il m'est apparu évident que nous dépasserions probablement la mi-juin, j'ai parlé à M. Broadbent et je lui ai demandé s'il accepterait de prolonger son contrat si nous le lui demandions. Il m'a alors indiqué qu'il avait d'autres projets pour l'été et, même s'il n'a pas donné de réponse définitive, il n'était pas très enthousiaste. Alors, lorsque le temps a passé et que j'ai appris qu'un nouveau sous-ministre associé venait aux Transports, quelqu'un qui avait suivi le dossier au Conseil privé... Il s'agissait du haut fonctionnaire qui s'occupait, je crois, des opérations du gouvernement. Notre ministère faisait partie de ce dont il s'occupait au Conseil privé. Il connaissait donc bien le dossier et, à la fin, je n'ai pas proposé à M. Broadbent de renouveler son contrat, avec l'accord du Ministre». [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:44]

gouvernement, ayant pris une décision au sujet de l'avenir des aérogares, ne se soit pas retiré pour laisser aux fonctionnaires le soin de mener le processus de façon ordonnée, comme il l'a fait pour l'aérogare 3». [Note de service intitulée «Coordination avec Transports Canada concernant l'AILBP», de M. Dale Nankivell à M. Jack Matthews, datée du 15 avril 1993, doc. du Comité 001104; c'est nous qui soulignons]

Les hauts fonctionnaires du Conseil du Trésor qui ont témoigné attestent que des pressions politiques étaient exercées pour que l'accord soit conclu au plus tard le 31 mai 1993. Répondant aux questions du sénateur David Tkachuk, M. Cappe mentionne une «forte pression» qui «provenait du nombre de réunions qui étaient convoquées, de M. Broadbent qui revenait de ses séances de négociations en disant qu'il voulait que l'on progresse rapidement parce qu'il lui fallait respecter le délai du 31 mai. [...] Les hauts fonctionnaires comprenaient tous que le dossier était urgent, qu'il était urgent de conclure l'accord avec le 31 mai». [*Délibérations du Comité*, le mardi 22 août 1995, fascicule n° 14, 14:94]

Le Comité a appris que cette pression émanait directement du Premier ministre.

Le 29 avril 1993, M^{me} Carole Swan, alors directrice de la Division des transports et de l'environnement du Conseil du Trésor, a souligné que «Il se peut que M. Shortliffe veuille se réunir régulièrement afin de respecter le délai du 1^{er} juin». [Voir p. ex., la note de service de M^{me} Carole Swan à M. Sid Gershberg du 29 avril 1993, doc. du Comité 00269]

Au 6 mai 1993, la pression s'était intensifiée. «Shortliffe veut des réunions hebdomadaires pour que tout le monde conserve la cadence pour ce qui est tant des aérogares 1 et 2 que des pistes». [Note de service interne de M. Paul Gouin à M. Al Clayton du 6 mai 1993, doc. du Comité 000417]

M. Broadbent convient avec le sénateur Michael Kirby que ce niveau de participation de la part du Bureau du Conseil privé, et de la part de son greffier, était sans précédent :

Le sénateur Kirby : [V]ous venez de dire qu'il y avait des réunions toutes les semaines. Comme j'ai pu, à divers moments, connaître ce qu'est le travail de secrétaire de cabinet pendant bien des années, je suis tout à fait ébahi de savoir que la question avait une si grande importance que le secrétaire du cabinet prenait le temps d'y consacrer une réunion toutes les semaines. Le degré d'importance accordé au dossier est absolument incroyable. [...] [J]'ai peine à le croire.

M. Broadbent : Oui, je suis d'accord avec vous. Cela dénote l'intérêt vif suscité par le dossier aux échelons de la bureaucratie des organismes centraux et, en partie, sénateur, c'est peut-être, selon moi, parce qu'ils savaient qu'on leur demandait d'accomplir une somme colossale de travail en très peu de temps et qu'ils ne voulaient pas que les choses déraillent.

Le sénateur Kirby : Mais ne seriez-vous pas également d'accord pour dire que, compte tenu de l'expérience que vous avez ailleurs au BCP, que divers éléments de la fonction publique sont souvent appelés à accomplir quelque chose en très peu de temps, mais que la participation d'un organisme central, puisque après tout, la transaction intéressait un ministère axial.

M. Broadbent : Oui.

Le sénateur Kirby : Ce n'était pas une grande question au sens où cela aurait relevé d'une politique officielle. C'était une transaction. Je n'ai certainement jamais été témoin d'un cas où les organismes centraux ont porté (du moins, le BCP et le secrétaire du cabinet, en particulier) un tel intérêt à un dossier.

M. Broadbent : Je n'arrive pas à me rappeler moi non plus une situation comparable. [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:109]

Les documents mettent en lumière les difficultés auxquelles faisaient face les hauts fonctionnaires en raison du délai du 31 mai/1^{er} juin. En novembre 1992, M. Shortliffe avait signalé au Premier ministre que, d'après le ministère des Transports, il faudrait au moins douze mois pour négocier le bail. [Note de service de M. Glen Shortliffe au Premier ministre, datée du 16 novembre 1992, doc. du Comité 002188] En date de la fin avril 1993, les négociations n'avaient même pas commencé; selon d'autres notes de service adressées au Premier ministre par M. Shortliffe, les sociétés Paxport et Claridge, qui mettaient du temps à éclaircir le statut de Mergeco, retardaient les discussions. [Note de service au Premier ministre de la part de M. Glen Shortliffe, en date du 23 avril 1993, doc. du Comité 002210; voir aussi la note de service de M. Glen Shortliffe au Premier ministre, en date du 8 avril 1993, doc. du Comité 002097]

Néanmoins, les documents montrent la force de la pression exercée pour que soit respecté le délai du 1^{er} juin 1993. Des hauts fonctionnaires ont signalé les dangers liés au fait de bousculer des négociations aussi complexes : «Le calendrier est extrêmement serré [...]». Allan MacGillivray [un haut fonctionnaire du Bureau du Conseil privé] nous a fait savoir que David Broadbent ne ménagera aucun effort pour s'assurer que *rien ne compromettra la réalisation de cet objectif*. Par conséquent, il reste très peu de temps pour conclure avec l'exploitant une entente réglant la question des ressources humaines». [Note d'une réunion interministérielle sur la question des ressources humaines des aéroports 1 et 2, 27 avril 1993, doc. du Comité 002101; c'est nous qui soulignons]

D'autres hauts fonctionnaires avaient les commentaires suivants :

«Il semble encore extrêmement optimiste de viser la date du 1^{er} juin. Il reste encore à régler des questions délicates de personnel et de finances. Il n'est peut-être pas très prudent de vouloir conclure dans des délais aussi brefs un accord complexe de

louage emphytéotique». [Note de service de M^{me} Carole Swan à M. Sid Gershberg du 29 avril 1993, doc. du Comité 00269]

Les négociations n'ont commencé officiellement que le 5 mai 1993³⁴. Néanmoins, on maintenait la «forte pression» pour que soit respectée la date manifestement irréaliste du 31 mai :

«M. Shortliffe a convoqué cette réunion pour faire le point sur les négociations touchant le réaménagement des aérogares 1 et 2. Une forte pression est toujours exercée pour que la date limite du 31 mai 1993 soit respectée, pour qu'un accord soit conclu. Le ministre des Transports a annoncé le mercredi 5 mai 1993 que des négociations officielles sur la proposition de Paxport étaient engagées». [Note de service de M^{me} Carole Swan à M. Sid Gershberg du 10 mai 1993, doc. du Comité 00272]

S'il est courant qu'un premier ministre veuille réaliser certains objectifs avant de laisser le pouvoir, le fait d'exercer des pressions pour qu'un accord d'une telle ampleur soit conclu en l'espace de seulement trois semaines mérite qu'on s'y arrête. En vertu des accords, le contrôle de l'aéroport le plus important du Canada — porte sur les marchés nationaux et internationaux — aurait été transféré pour 57 ans. Le Comité s'est fait dire qu'il s'agissait d'une transaction beaucoup plus complexe que celle de l'aérogare 3, puisqu'elle entraînait le transfert d'immeubles, de baux avec des détaillants-locataires et des compagnies aériennes ainsi que d'ententes avec les employés. [Témoignage de M. Wayne Power, *Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:11-12] **Il avait fallu dix mois pour régler les contrats tout simples de l'aérogare 3 et on voulait maintenant négocier et conclure les accords des aérogares 1 et 2 en l'espace de trois semaines seulement.** Pourquoi? Le Comité n'a trouvé qu'une seule réponse : le Premier ministre voulait régler la question avant de quitter le pouvoir.

La relève de la garde

Finalement, la date limite du 31 mai/1^{er} juin n'a pas été respectée. Manifestement, il allait y avoir des changements à la tête du gouvernement (le pouvoir est passé de Brian Mulroney à Kim Campbell) et plusieurs événements intéressants se sont produits.

³⁴ Tous les hauts fonctionnaires ont été formels : tant que la question du financement n'était pas réglée, les parties pouvaient seulement «se consulter» et non «négocier». [Voir p. ex. le témoignage de M. Jean Corbeil, *Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:27] Il semble toutefois, d'après un examen des notes de service échangées au gouvernement en mars et en avril 1993, que M. Broadbent négociait déjà avec Mergeco. Par exemple, une note de service préparée par M. Broadbent au sujet d'une réunion avec MM. Jack Matthews et Peter Coughlin le 23 mars 1993, et intitulée «L'aspect Air Canada», doc. du Comité 001555, décrit essentiellement une séance de négociations avec ses propositions et ses contre-propositions touchant les loyers, le report des loyers et des plans pour la suite des négociations. Cette situation soulève encore une fois des doutes au sujet de l'intégrité du processus : manifestement, la date limite du 31 mai/1^{er} juin préoccupait à tel point le négociateur en chef que celui-ci était prêt à entamer les négociations même avant d'y être autorisé par le gouvernement.

En premier lieu, une curieuse entente a été rapidement préparée et passée le 18 juin 1993 entre le gouvernement du Canada et la Pearson Development Corporation. L'entente n'établissait pas de façon définitive les conditions du projet de réaménagement puisque, comme le montrent les documents et les témoignages des équipes de négociations qui ont suivi, les nombreuses pierres d'achoppement subsistaient encore. Le texte de l'entente précise d'ailleurs que celle-ci ne constitue pas un accord exécutoire liant les parties. [Lettre-entente entre Sa Majesté la Reine du chef du Canada et la Pearson Development Corporation du 18 juin 1993, doc. du Comité 000832] Le but visé était d'obliger les parties — en particulier le nouveau gouvernement — à poursuivre les négociations.

M. Rowat a expliqué au Comité «qu'il paraissait évident [...] qu'il y aurait un changement de gouvernement, avec un nouveau chef et un nouveau Cabinet. Il y avait donc beaucoup [...] d'incertitude». Le document visait donc essentiellement «à faire le point sur les négociations, afin que les deux parties puissent poursuivre le processus à partir des mêmes bases». [*Délibérations du Comité*, le jeudi 3 août 1995, fascicule n° 10, 10:64-65]

Toutefois, même si cette entente n'a pas permis de faire avancer beaucoup les négociations, elle a fait comprendre à toutes les parties qu'un accord serait conclu. Elle constituait donc un des jalons mentionnés par les négociateurs au cours des audiences, jalon qui a marqué un plus grand engagement de la part du gouvernement à l'égard des promoteurs et, par le fait même, exposait encore davantage le gouvernement à l'obligation de verser des indemnités s'il devait décider, pour quelque raison que ce soit, que les conditions étaient inacceptables et qu'il ne voulait plus continuer. [Témoignage de M. William Rowat, *Délibérations du Comité*, le lundi 23 octobre 1995, 1110-3]

Un autre changement est survenu à l'époque qui a influé sur le dossier : M^{me} Huguette Labelle a été remplacée par M^{me} Jocelyne Bourgon comme sous-ministre des Transports. M^{me} Labelle a fait savoir très clairement au Comité qu'elle n'avait pas demandé de mutation. Elle ne l'a pas dit, mais il est bien connu qu'une mutation du poste de sous-ministre des Transports, poste sous-ministériel le plus élevé de la fonction publique, à celui de présidente de l'Agence canadienne de développement international constitue une rétrogradation aux yeux des fonctionnaires. [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:33]

Les circonstances entourant ce remaniement sous-ministériel sont intéressantes. M. Bill Neville qui, rappelons-le, était membre de l'équipe de lobbying de Paxport, s'est également vu confier d'autres responsabilités en juin 1993 : il est devenu le chef de l'équipe de transition quand M^{me} Kim Campbell est devenue première ministre. M. Neville décrit ces tâches comme suit :

M. Neville : De façon générale, l'ordre du jour portait sur les arrangements proprement dits de transition dans l'intervalle de la relève de la garde, si vous

voulez, la restructuration et la réorganisation du Cabinet et du gouvernement qui devait se faire parallèlement à cette transition. La nomination des ministres, du personnel de notre bureau et une sorte de calendrier immédiat d'activités pour M^{me} Campbell. Voilà quels en étaient les principaux éléments.

[...]

Le sénateur Stewart : Avez-vous parlé de vous débarrasser de sous-ministres? Y avait-il un sous-ministre qui ne faisait pas l'affaire et qui aurait dû être évincé?

M. Neville : Dans le cadre du processus de transition découlant entre autres de la réorganisation des ministères qui avaient cours à ce moment-là, il y avait également une réorganisation au niveau des sous-ministres et cela s'est fait au cours de cette période.

Le sénateur Stewart : Pouvez-vous nous donner des détails en ce qui concerne les Transports par exemple?

M. Neville : Si j'ai bonne mémoire, c'est au cours de cette réorganisation que M^{me} Labelle a été transférée à l'ACDI et que Jocelyne Bourgon a été nommée sous-ministre des Transports. [*Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:21]

Pendant qu'il conseillait M^{me} Campbell au sujet des ministres, de la dotation et du remaniement sous-ministériel, M. Neville continuait de facturer Paxport pour des activités de lobbying entreprises en son nom. [Voir les factures signées par William H. Neville à l'intention de Paxport Management Inc. en date du 3 mai 1993, du 3 juin 1993, du 2 juillet 1993 et du 3 août 1993 (pour services rendus au cours des mois de mai, juin, juillet et août 1993), doc. du Comité 002290]³⁵

Manifestement, le taux de roulement dans ce dossier était très élevé : sous-ministres, sous-ministres adjoints et négociateurs en chef se succédaient à un rythme rapide. Le sénateur John Bryden a donc posé à M. Corbeil la question qui s'imposait logiquement : «Faisiez-vous valser les fonctionnaires jusqu'à ce que vous trouviez quelqu'un qui accepte de conclure cette transaction?» [*Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:73-74] M. Corbeil, refusant de répondre à la question, a plutôt choisi de s'y attaquer en la disant «insidieuse».

³⁵ M. Ray Hession, ancien président de Paxport, a témoigné à plusieurs reprises que M. Neville n'était plus sur la liste de paie de Paxport depuis plusieurs mois quand il est devenu membre de l'équipe de transition de M^{me} Campbell. [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:10 et 9:14] Cependant, les documents fournis par M. Neville montrent clairement que celui-ci continuait de facturer à Paxport des services de lobbying, et ce même pendant la période où il travaillait (à titre bénévole) pour M^{me} Campbell. [Voir le témoignage de M. Neville, *Délibérations du Comité*, le jeudi 24 août 1995, fascicule n° 16, 16:20]

Quand M^{me} Bourgon est devenue sous-ministre, elle et le ministre des Transports ont décidé qu'elle devrait concentrer son attention sur les besoins généraux du Ministère plutôt que d'essayer de se mettre au courant de négociations complexes. [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:53]. Par conséquent, M. Rowat a gardé le contrôle du dossier.

Ainsi, la continuité dans cette affaire, depuis le début jusqu'à la signature de l'accord en octobre 1993, fut assurée seulement par M. Glen Shortliffe, qui a d'abord participé en sa qualité de sous-ministre des Transports et a continué d'assurer une surveillance étroite lorsqu'il était au Bureau du Conseil privé. Finalement, bien entendu, c'est son adjoint, M. Rowat, qui est intervenu pour régler les questions en suspens et conclure l'accord.

V. LA NÉGOCIATION DES ACCORDS

Le gouvernement et Mergeco (devenue la Pearson Development Corporation, «PDC» ci-après) ont amorcé des négociations officielles le 5 mai 1993. Comme nous l'avons vu, il était d'une importance critique pour le gouvernement que les négociations s'engagent à partir de la proposition de Paxport, et non pas à partir de celle de Claridge ou d'une «troisième» proposition (de la PDC), et soient perçues comme telles. Le gouvernement reconnaissait qu'on croirait autrement que l'intégrité du processus de la DP avait été compromise.

Lorsqu'on le compare aux propositions initiales de Paxport et de Claridge, il est évident que le contenu de l'entente finale ressemble beaucoup plus à la proposition de Claridge qu'à celle de Paxport. Cela ressort d'une comparaison des chiffres clés :

Bénéfices de l'État : Il s'agit probablement du principal élément qui a motivé le choix de la proposition de Paxport comme «meilleure proposition globale». Paxport promettait initialement des recettes de 1 246 millions de dollars à l'État, contre 642 millions pour Claridge. Dans l'entente finale, les recettes de l'État étaient de 843 millions, ce qui se rapproche beaucoup plus du montant fixé dans la proposition de Claridge que celui auquel Paxport s'engageait.

Dépenses de construction : Paxport s'engageait à dépenser 858 millions de dollars pour le réaménagement par étapes des aérogares, contre 602,2 millions pour Claridge, alors que l'entente finale prévoyait des dépenses de 682 millions. (Comme nous le verrons plus en détail ci-après, seulement 350 millions étaient effectivement *exigés*; le reste des dépenses de construction ne deviendraient nécessaires que si certains niveaux de volume de voyageurs étaient atteints.) Il va de soi que le chiffre de 682 millions se rapproche beaucoup plus de 606,2 millions que de 858 millions.

Financement du plan d'aménagement : La proposition initiale de Paxport comportait des coûts de 858 millions de dollars que l'entreprise prévoyait financer

en conjuguant 106,5 millions de capitaux propres, des emprunts de 618 millions et 33,5 millions de capitaux autogénérés. De son côté, la proposition de Claridge exigeait 758,2 millions de dollars composés de 227,5 millions en capitaux propres et d'emprunts de 530,7 millions. L'entente finale nécessitait 742 millions de dollars à financer de capitaux propres à hauteur de 258 millions et d'emprunts de 484 millions. Les ressemblances entre l'entente finale et la proposition de Claridge sont frappantes.

Coûts des lignes aériennes par passager : La proposition de Paxport aurait fait grimper les coûts par passager des lignes aériennes à 4,93 \$ la première année, pour les hisser à 11,79 \$ la dixième année. Par contre, la proposition de Claridge aurait limité les coûts par passager aux lignes aériennes à 2,49 \$ la première année, pour les porter à 8,79 \$ la dixième année. Dans l'entente finale, les coûts par passager des lignes aériennes, de 2,38 \$ la première année, seraient passés à 8,15 \$ au bout de dix ans.

Préoccupations des fonctionnaires

Le contraste entre la proposition initiale de Paxport et la position de négociation proposée a inquiété les fonctionnaires pratiquement dès le début des négociations. Dans une note en date du 10 mai 1993 à M. Sid Gershberg, M^{me} Carole Swan du Conseil du Trésor notait :

«L'enjeu le plus important est peut-être l'ampleur des divergences entre ce que l'on propose maintenant pour le réaménagement des aéroports 1 et 2 et la proposition initiale de Paxport (plus de 600 millions de dollars).» [Note de service en date du 10 mai 1993 de M^{me} Carole Swan à M. Sid Gershberg, doc. du Comité 00272]

Au sujet des propositions de réaménagement des deux aéroports, un investissement immédiat de 47 ou de 96 millions de dollars, Mme Swan ajoutait ensuite :

«Il ne serait donné suite aux autres travaux de réaménagement, au-delà des investissements de 47 ou de 96 millions de dollars prévus dans la proposition initiale de 600 millions de Paxport, que si les volumes de passagers atteignent des niveaux qui rendent le projet viable et que :

- les lignes aériennes acceptent des baux permettant de recouvrer leur part des coûts, ou
- la redevance d'installation passagers (RIP) permet de recueillir les fonds requis.» [*Ibid*]

Après avoir mentionné que l'entente négociée à l'égard d'une redevance d'installation passagers, à savoir qu'aucune RIP ne serait envisagée avant janvier 1996 et qu'il faudrait que l'État (ou son cessionnaire, une AAL peut-être) approuve la proposition et ses modalités détaillées, M^{me} Swan faisait une mise en garde :

«Il y a donc un risque que, si ces conditions ne sont pas remplies, les aérogares soient cédées à bail pour 57 ans (bail de 40 ans plus une option de prolongation de 17 ans) sans autre engagement que celui d'investir 47 ou 96 millions de dollars.» [Ibid.; c'est nous qui soulignons]

Telles furent effectivement les conditions finales du bail signé par les parties. Le gouvernement de l'Ontario notait, dans son examen des accords finals, en vue du mémoire présenté à M. Robert Nixon :

«Le locataire obtient un bail de 57 ans même si toutes les étapes de réaménagement ne se réalisent pas. C'est assez inhabituel. D'habitude, si un locataire ne procède pas au réaménagement, il risque que le bail soit annulé. Ce n'est qu'après avoir exercé l'option de prolongation pour les 20 dernières années que le rachat du propriétaire est possible.» [Annexe A au Mémoire provincial adressé à Robert Nixon, en date du 17 novembre 1993, doc. du Comité 002318, pp. 212-720, c'est nous qui soulignons, sauf pour le mot «après»]

Pour revenir à mai 1993, d'autres notes internes dans lesquelles les fonctionnaires exprimaient des inquiétudes encore plus vives au sujet de l'entente en cours de négociation ont circulé. Le 17 mai 1993, M. Robert Fonberg du ministère des Finances écrivait au sous-ministre adjoint, M. Michael E. Francino, pour faire le point sur les négociations et les questions en suspens. Sa note commençait ainsi :

«Les fonctionnaires des Transports travaillent de façon frénétique afin de respecter l'échéance de la fin mai pour la signature des accords finals. Dans quelques semaines, le gouvernement sera lié par un bail d'une durée de 57 ans.» [Note du 17 mai 1993 de M. Fonberg à M. Francino, doc. du Comité 002072; souligné dans le document original]

M. Fonberg s'inquiétait vivement de ce que, une fois à la tête des trois aérogares et en position de monopole, le promoteur puisse imposer des redevances exagérées :

«Comme je l'ai mentionné dans des notes antérieures, une fois que les accords finals auront été signés avec la PDC, le promoteur exploitera les trois aérogares de Pearson. Le fait que la PDC sera bientôt en mesure d'imposer des droits «monopolistiques» nous inquiète. Les fonctionnaires des Transports envisagent des façons de maintenir le contrôle des prix à l'avenir, mais ils n'ont pas encore élaboré de solutions acceptables. **L'intégration de mesures de sauvegarde au bail foncier**

s'impose pour éviter que les lignes aériennes soient frappées de frais supérieurs à ceux envisagés dans la proposition initiale.

Au sujet des redevances des lignes aériennes, il y a lieu de noter que selon la proposition de Paxport les redevances augmenteront de plus du triple au cours des dix prochaines années, passant de 2,38 \$ à 8,72 \$ par passager. Le gouvernement pourrait s'exposer à des critiques pour avoir toléré, et peut-être même encouragé, ces hausses : la PDC fixera les prix de façon à recouvrer les dépenses en capital, ainsi que les coûts d'exploitation et d'entretien; les loyers fonciers et les bénéfices; au cours des premières années du projet, les loyers fonciers, de près de 30 millions de dollars, représentent un tiers des redevances versées par les lignes aériennes; la dixième année, ces loyers atteindront près de 100 millions de dollars. **Il faudrait manifestement, si l'entente est maintenue, préparer un plan de communication pour défendre les hausses des prix et des loyers fonciers.** Le gouvernement ne saurait en refiler la responsabilité au promoteur.» [Ibid; souligné dans le document original]

Aucune mesure de sauvegarde notable n'a cependant été incorporée au bail; et le coût des travaux d'aménagement, y compris les bénéfices élevés de l'État et les profits considérables des promoteurs, aurait été imputé aux voyageurs.

M. Fonberg abordait l'examen, par le ministère des Finances, des aspects économiques de ce projet pour déterminer si le niveau de risques-avantages auquel les investisseurs s'exposent est raisonnable. À partir des prévisions, par la PDC, d'un taux interne de rendement après impôts de 19 p. 100, il faisait la mise en garde suivante :

«Des projets «risqués» exigeraient peut-être un rendement aussi élevé pour attirer les investisseurs; notre impression première du projet d'aménagement des aéroports 1 et 2 indique toutefois que le promoteur court peu de risques :

- les travaux de réaménagement ne sont entrepris que si le volume du trafic dépasse des seuils de déclenchement préétablis,
- l'acceptation par les lignes aériennes de hausses des prix ou la mise en place d'une RIP sont aussi des conditions préalables aux travaux de réaménagement ultérieurs,
- les baux signés entre la PDC et les lignes aériennes seront vraisemblablement structurés de façon à ce que celles-ci continuent de verser les mêmes redevances quel que soit le niveau du trafic,
- la formule d'établissement des redevances des lignes aériennes permet à la PDC d'imputer les trois quarts de tout dépassement des coûts de construction aux utilisateurs, et

-
- le ministère des Transports envisage peut-être une «garantie» du niveau de trafic en s'engageant à ne pas dérouter de trafic de l'aéroport Pearson si le volume risque de tomber sous le seuil de 30 millions de voyageurs.

[...]

Pour résumer, **compte tenu du niveau minimal de risque, un rendement de 19 p. 100 sur les investissements pour le projet d'aménagement des aérogares 1 et 2 nous paraît peut-être excessif à première vue.** [Ibid.; souligné dans le document original]

Sur ces points, l'entente signée en octobre 1993 n'a pas éliminé les risques signalés par M. Fonberg. Le ministère des Transports a fini par accepter de garantir de ne pas dérouter de trafic de l'aéroport Pearson, accordant ainsi aux promoteurs le monopole de l'espace aérien du sud de l'Ontario.

La note du ministère des Finances se termine sur un ton pessimiste :

«Comme le gouvernement tient à signer une entente dans moins de deux semaines, il est malheureusement peu probable que le ministère des Transports réussisse à obtenir du promoteur un taux de rendement moindre. La PDC a sans doute le sentiment de tenir le haut du pavé dans les négociations.» [Ibid.; souligné dans le document original]

Les concessions obtenues par les promoteurs

La PDC a effectivement réussi à renforcer sensiblement sa position dans les négociations au moyen de ce que l'on a appelé le «sandwich d'Air Canada». Elle a réussi à persuader le gouvernement, comme nous le verrons, que ses fonctionnaires avaient commis, dans le processus de la DP, une erreur grave qui pourrait donner lieu à des poursuites.

Le Conseil du Trésor signalait en outre, dans une note du 19 mai 1993, que «l'entente avec Mergeco est déjà très favorable au promoteur (faible risque, taux de rendement élevé), de sorte que de nouvelles concessions ne seraient pas justifiées». [Note en date du 19 mai 1993 de M. Sid Gershberg à M. Mel Cappe, doc. du Comité 001107] Il faisait observer que :

«La conclusion d'une entente grâce à une garantie de paiement du loyer des lignes aériennes à l'avenir ou à la promesse que le gouvernement acceptera des RIP risque de placer le prochain gouvernement dans une position extrêmement difficile.

Dans l'ensemble, il ne nous semble pas clair que le ministère des Transports ait adopté une «position limite.» [Ibid.; souligné dans le document original]

Si une position limite a été adoptée, il est certain qu'elle n'existait pas à la fin de mai 1993. Dans une note en date du 25 mai 1993, M. Rowat explique à M. Shortliffe la

proposition reçue de la Pearson Development Corporation de différer 11 millions de dollars en loyers annuels en précisant :

«Mergeco propose de dépenser 96 millions de dollars au cours des deux premières années, mais seulement à condition que Transports Canada réduise son loyer de 11 millions de dollars par an en attendant la conclusion de nouveaux accords avec les lignes aériennes, peut-être pas avant 1997. Nous avons recommandé de ne pas accorder cette réduction du loyer parce que :

- cela pourrait renforcer l'idée préconçue des adversaires du projet que **l'accord n'a pas été conclu en s'appuyant uniquement sur des considérations commerciales**;
- les taux de rendement sont déjà suffisants (18,2 p. 100);
- cela donnerait l'impression que **le gouvernement subventionne le projet**, alors que le principe sous-jacent est de confier les travaux au secteur privé;
- **il n'existe aucune source de capitaux pour financer les travaux dont le coût pourrait atteindre 44 millions de dollars**,
- cela pourrait être interprété comme une façon de subventionner le transport aérien.» [Ibid.; Note de M. Rowat adressée à M. Shortliffe, 25 mai 1993, doc. du Comité 002194; c'est nous qui avons ajouté les caractères gras; le soulignement figurait dans le document original]

Dans son témoignage, M. Rowat a affirmé que la question de l'étalement du loyer est devenue critique à la fin de mai. Il a été très clair : «Le gouvernement a tranché la question **en donnant comme instruction à ses représentants d'accepter de différer 11 millions de dollars en loyer pour trois ans.**» [*Délibérations du Comité*, le mercredi 16 août 1995, fascicule n° 12, 12:7; c'est nous qui soulignons]

M. David Broadbent, qui avait le premier négocié cet étalement du loyer, a convenu, lorsqu'il est venu témoigner, que cela pouvait être perçu comme «une subvention ou [...] un prêt de l'État» aux promoteurs en vue de faire démarrer le projet. [*Délibérations du Comité*, le jeudi 3 août 1995, fascicule n° 10, 10:27]

Cela allait à l'encontre de la demande de propositions, qui stipulait :

«Malgré que le gouvernement s'attende à un rendement financier approprié en échange de sa contribution, il ne prendra aucune forme d'engagement financier, notamment celui de reprendre en régime de cession-bail les installations (en dehors des locaux précisés), ne fournira aucune garantie financière supplémentaire et n'effectuera aucun investissement dans le projet. Le gouvernement ne jouera aucun rôle qui puisse donner à croire à une association ou une coentreprise.

En outre, le gouvernement ne fournira aucune garantie se rapportant à une hypothèse quelconque en ce qui concerne la capacité de l'aéroport, les volumes de passagers, les affectations des sociétés aériennes, les loyers commerciaux et les redevances, ou tout autre facteur ou condition variables qui puissent avoir un impact sur les calculs que le promoteur pourra faire des revenus et des coûts.» [Projet de réaménagement des aéroports, Demande de propositions, mars 1992, p. 31, Cahier d'information du Comité, onglet «H»]

Vu dans ce contexte, l'empressement avec lequel le gouvernement a accepté de différer les 33 millions de dollars de loyer ne manque effectivement pas de «renforcer l'idée préconçue dans l'esprit des adversaires du projet que l'accord n'a pas été conclu en s'appuyant uniquement sur des arguments commerciaux,» comme on en avait prévenu M. Shortliffe.

Le Comité a entendu des témoignages sur plusieurs dispositions de l'accord final qui allaient directement à l'encontre de la demande de propositions, faisaient porter par le gouvernement des risques qui incomberaient normalement aux promoteurs (justifiant ainsi les énormes profits réalisés), mettaient les promoteurs à l'abri des forces concurrentielles du marché, et imputaient aux voyageurs les coûts des travaux d'aménagement, les profits encaissés par les promoteurs et les bénéfices de l'État. Signalons notamment :

La garantie concernant le déroutement des passagers : Le gouvernement indiquait explicitement dans la demande de propositions qu'il n'accorderait **aucune** garantie concernant la capacité de l'aéroport, les volumes de passagers ou les affectations des sociétés aériennes.

Paxport a néanmoins obtenu une telle garantie du gouvernement, qui a promis non seulement de ne pas dérouter de trafic aérien de l'aéroport Pearson, mais aussi de ne permettre aucune aéroport dans un rayon de 75 km de l'aéroport Pearson tant que le volume de passagers à l'aéroport Pearson - les trois aéroports confondus - n'atteindrait pas 33 millions de personnes par an.³⁶

Les fonctionnaires des Transports s'opposaient vivement à une telle garantie. M. Power a fait remarquer :

«J'ai la conviction que **les chiffres avancés par Paxport concernant la capacité sont extrêmement exagérés et peu réalistes**. Il faudrait accroître les installations des aéroports pour répondre aux besoins de la région de Toronto avant que ces chiffres ne soient atteints. **Un plan d'indemnisation formerait un lourd passif éventuel pour l'État et entraverait la prestation des services** au moment requis.

³⁶ Comme le président, le sénateur Finlay MacDonald, l'a fait remarquer pendant les audiences, il serait plus juste d'utiliser le chiffre de 31,5 millions, puisque le gouvernement pouvait, en une fois, dérouter jusqu'à 1,5 million de personnes. [Délibérations du Comité, le mardi 22 août 1995, fascicule n° 14, 14:5]

Pour résumer, **il est recommandé de rejeter les garanties de trafic, l'indemnisation, la protection contre la concurrence et autres notions du genre.** Paxport a manifesté le désir de participer à une entreprise de privatisation, s'attend à encaisser des profits au moins aussi élevés que ceux offerts par la plupart des initiatives du secteur privé, et devrait être prête à le faire aux conditions qui ont cours dans le secteur privé.» [Note de M. Wayne Power à M. Chern Heed, en date du 11 mai 1993, doc. du Comité 002013; c'est nous qui soulignons]

La même mise en garde se retrouve dans une autre note de Transports Canada en date du 12 mai 1993 :

«Le déroutement du trafic ne pourrait se produire que si l'une ou plusieurs des lignes aériennes qui utilisent les aéroports 1, 2 et 3 décidaient de déménager ou de partager leurs opérations et d'utiliser un autre aéroport pour une partie de leurs vols. Cela pourrait aussi se produire si les lignes aériennes qui n'utilisent pas les aéroports 1 et 2 ou l'aéroport 3 ouvraient une nouvelle aéroport et attireraient des passagers de lignes aériennes qui les utilisent. **Mergco devrait accepter ce type de déroutement que les lignes aériennes effectuent en fonction des forces du marché (emplacement, accès, qualité du service, prix) comme un risque commercial. Si son «produit» est concurrentiel, elle devrait réussir à maintenir sa part du marché.**» [«Déroutement du trafic - volume minimum de passagers à «garantir»?», en date du 12 mai 1993, doc. du Comité 002008; c'est nous qui soulignons]

Le directeur général de l'aéroport Pearson, M. Heed, a transmis la note de M. Power, en date du 11 mai, à M. Victor Barbeau, en ajoutant le commentaire suivant : «Je crains que M. Broadbent soit sympathique à l'idée de réconforter Paxport en lui assurant jusqu'à 39 millions de voyageurs. C'est, à mes yeux, une garantie ou, autrement dit, un passif éventuel...» [Note de M. Chern Heed à M. Victor Barbeau, en date du 12 mai 1993, doc. du Comité 002013]

La garantie concernant le déroutement des passagers comportait une exception. Le gouvernement pourrait aménager un autre aéroport pour concurrencer l'aéroport Pearson, à condition de verser une indemnité à la PDC ou de lui donner accès à la Zone 4, un secteur de l'aéroport Pearson réservé à l'expansion éventuelle qui avait été exclu expressément de la demande de propositions. La PDC a encore une fois réussi à se mettre à l'abri de tout risque, à convaincre le gouvernement de les assumer (aux termes de l'accord, l'indemnité serait prélevée sur les loyers fonciers de l'État), et à violer les termes de la demande de propositions.

Il est également clair que, en accordant une telle garantie, le gouvernement se mettait dans l'impossibilité de promouvoir l'utilisation de l'aéroport Mount Hope de Hamilton comme autre point d'accès à la région du sud de l'Ontario, selon l'initiative prévue par *L'aviation dans le sud de l'Ontario : Une stratégie pour l'avenir* d'août 1989, dans lequel le

projet de réaménagement des aérogares 1 et 2 était lancé. [Communiqué du ministre n° 88/89, du 18 août 1989]

Hamilton est aussi près de Toronto que Newark l'est de la ville de New York; pourtant **dans leur empressement à finaliser l'accord avec la PDC, les négociateurs ont abandonné la possibilité d'y aménager un aéroport comme autre point d'accès au sud de l'Ontario**, même si cela faisait partie du plan initial du gouvernement et si ce genre de garantie allait directement à l'encontre des conditions fixées dans la demande de propositions.

Seuils de déclenchement des travaux : Comme nous l'avons indiqué, la proposition prévoyait l'étalement des travaux de construction aux aérogares. Au cours des négociations, cela est toutefois devenu un accord en vertu duquel la seule obligation ferme des promoteurs était de mener à bien la phase initiale des travaux - au coût de 96 millions de dollars -, suivie d'une phase 1B d'un coût de 254 millions. L'aéroport pourrait n'être le théâtre d'aucun autre chantier de construction pendant 57 ans à moins que certains niveaux de passagers soient atteints :

Le sénateur Kirby : Ai-je raison de dire que, à moins que les niveaux de passagers n'aient été négociés avec le plus grand soin, les promoteurs auraient pu obtenir un bail de 57 ans et ne rien dépenser au-delà de l'option initiale prévoyant un démarrage rapide, les points déclencheurs n'ayant pas été atteints? Cela aurait-il été possible?

M. Broadbent : Si les négociateurs de la Couronne avaient été stupides et incompetents, ou que la croissance du nombre de passagers à Pearson était demeurée parfaitement stagnante, oui.

Le sénateur Kirby : L'imputation d'un degré d'intelligence à diverses personnes ne m'intéresse nullement. Ai-je raison de dire que si le niveau de passagers était demeuré relativement (il n'avait pas même à demeurer stagnant), si les points déclencheurs n'avaient pas été atteints, ai-je raison de dire que les promoteurs n'auraient pas eu à dépenser plus d'argent?

M. Broadbent : Vous avez raison, et on n'aurait pas procédé au réaménagement. Sénateur, la négociation du point déclencheur revêtait une importance capitale. [Délibérations du Comité, le jeudi 3 août 1995, fascicule n° 10, 10:31]

Comme le montrent clairement les notes internes longuement citées plus haut, ces dispositions inspiraient de graves inquiétudes aux fonctionnaires, notamment du ministère des Finances et du Conseil du Trésor. L'accord a été claironné comme l'«initiative de réaménagement des aérogares [...] au coût de 700 millions de dollars [...] la plus importante jamais entreprise à l'aéroport,» le 30 août 1993. [Communiqué de Transports Canada n° 187/93, en date du 30 août 1993, doc. du Comité 002269] Il était cependant tout à fait

possible qu'une grande partie de cette somme ne soit jamais dépensée pour réaménager l'aéroport, qui avait toutes les chances de demeurer en l'état pendant 57 ans alors que le gouvernement, à moins d'indemniser la PDC, serait dans l'incapacité d'aménager d'autres aéroports dans la région. Autrement dit, le gouvernement assumait le risque que le niveau des passagers à l'aéroport baisse. La PDC avait l'assurance de garder le contrôle de l'aéroport pendant 57 ans, sans grandes obligations fermes de réaliser les travaux requis et sans responsabilité politique aucune envers la collectivité.

Les dispositions de l'entente concernant la rénovation de l'aérogare 1 augmentaient les dangers tant pour le gouvernement que pour les voyageurs. Le gouvernement avait accepté d'absorber un tiers des coûts nécessaires pour garder l'aérogare 1 ouverte s'ils dépassaient 15 millions de dollars. Ces travaux de rénovation n'auraient toutefois été entrepris que si certains seuils de trafic étaient atteints; il y avait donc un risque réel que l'État engage des millions de dollars pour assurer l'entretien de l'aérogare 1.

D'autre part, comme l'a expliqué M. Stephen Goudge, un avocat de bonne réputation qui servait de conseiller juridique à M. Nixon pour son examen de l'accord de l'aéroport Pearson :

«La fermeture de l'aérogare 1 aurait peut-être été obligatoire à un moment donné parce qu'elle deviendrait vétuste, si le nombre de passagers n'atteignait pas le point qui déclencherait l'aménagement. Il aurait alors fallu répartir les passagers de cette aérogare entre l'aérogare 3 et la partie de l'aérogare 2 qui aurait été réaménagée. Cela aurait peut-être forcé l'État à aménager d'autres installations avant qu'on atteigne le seuil des 33 millions de passagers, réduisant ainsi le loyer de l'État pour le nombre de passagers transférés, ainsi que les dépenses d'immobilisations pour la nouvelle installation.» [*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:47]

En réalité, le seuil déclencheur du nombre de passagers était de 24,2 millions pour la deuxième étape, qui devait commencer en mai 1997. Les fonctionnaires prévoyaient alors que «environ 26 ou 27 millions de passagers par an» transiteraient par les aérogares en 1997-1998. [Témoignage de M. John Desmarais, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:68]

La récession a toutefois duré plus longtemps que prévu à l'aéroport Pearson, et les niveaux de passagers ont peu bougé de sorte qu'ils n'atteignent en ce moment, à la fin de 1995, que 20,5 millions environ. [Témoignage de M. John Desmarais, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:72]

Redevances d'installation passagers : Le président du Comité, le sénateur Finlay MacDonald, a donné une définition exacte de la redevance d'installation passagers pendant

les audiences en la décrivant comme «une capitation perçue des personnes qui transitent par une aérogare.» [*Délibérations du Comité*, le mardi 22 août 1995, fascicule n° 14, 14:6]

Aucune des propositions initiales ne faisait mention d'une redevance installation passagers; l'entente finale autorisait toutefois la PDC à en imposer une si, devenue insolvable, Air Canada ne pouvait plus payer son loyer. Les problèmes financiers d'Air Canada étaient bien connus, et son loyer devait augmenter fortement en vertu de l'accord négocié.

Le gouvernement se réservait le droit d'approuver la redevance d'installation passagers. En cas de refus, l'accord stipulait toutefois que les promoteurs seraient libérés de l'obligation de réaliser les travaux de construction, sans abandonner aucun des droits que leur donnaient les accords.

Le sénateur Michael Kirby a résumé ainsi les conséquences de la conjugaison de la redevance installation passagers et de la garantie de déroutement des passagers pour les voyageurs :

«Les garanties visant le déroutement des passagers, dans les faits, interdisaient à ces derniers de quitter Pearson et d'aller ailleurs, tandis que, du même souffle on permettait aux compagnies aériennes d'imposer [...] des redevances d'installation passagers. Ce faisant, n'a-t-on pas placé le public voyageurs dans une situation impossible? D'une part, les voyageurs ne peuvent aller ailleurs parce que le gouvernement n'autorise pas le déroutement du trafic et, d'autre part, les compagnies ont effectivement le droit d'imposer une «taxe» (je mets le mot entre guillemets parce qu'il ne s'agit pas d'une taxe officielle), mais elles ont le droit d'imposer des redevances. **Comment a-t-on tenu compte des intérêts du consommateur dans tout cela?** [*Délibérations du Comité*, le jeudi 3 août 1995, fascicule n° 10, 10:33; c'est nous qui soulignons]

Le Comité n'a toujours pas reçu de réponse acceptable.

Loyers des lignes aériennes/Coût pour les voyageurs : Le mépris pour les intérêts des voyageurs ressort surtout des dispositions de l'accord qui se seraient répercutées sur les loyers des lignes aériennes. **Le gouvernement savait dès le départ que la proposition de Paxport entraînerait une forte hausse des loyers des lignes aériennes aux aéroports 1 et 2. Il savait également depuis le début que ces coûts seraient imputés directement aux passagers.**

La proposition de Paxport exigeait la renégociation du bail d'Air Canada en vue de doubler son loyer «tout de suite, sans aucune construction.» [Témoignage de John Desmarais, conseiller principal du sous-ministre adjoint, Groupe des aéroports, *Délibérations du Comité*, le mardi 15 août 1995, fascicule n° 11, 11:107] M. Desmarais nous a dit :

«C'est évidemment le passager qui aurait payé la note. Les coûts commençaient donc à augmenter très sérieusement, sans que les compagnies aériennes ni quelque autre personne en profitent. Le prix à payer était donc très élevé pour les compagnies aériennes et pour les voyageurs, si nous acceptions la proposition sans modification, même si le gouvernement touchait un loyer élevé.» [*Délibérations du Comité*, le mardi 15 août 1995, fascicule n° 11, 11:107]

Air Canada comprenait très bien que la proposition de Paxport ferait monter en flèche ses coûts, et ceux de ses passagers. Ses préoccupations ont été exposées dans une note de M. Rowat au ministre des Transports, en date du 30 juin 1993. Après avoir expliqué qu'Air Canada ne partageait pas l'optimisme du Ministère concernant la croissance du trafic aérien, et estimait que Mergeco imputait trop de coûts aux transporteurs aériens, M. Rowat ajoutait que «la société estime que les besoins de travaux additionnels de réaménagement des aéroports ne sont plus urgents [...]. Elle ne voudrait pas que la compétitivité de ses coûts subissent les contrecoups envisagés dans les propositions de Mergeco.» [Projet de réaménagement des aéroports 1 et 2, doc. du Comité 00294]

Air Canada faisait valoir qu'on lui demandait d'accroître de façon exponentielle les frais imputés aux passagers, au point de mettre sa compétitivité en péril, pour payer des travaux de réaménagement qui n'étaient ni nécessaires, ni souhaités, et pour subventionner les bénéfices élevés promis à l'État par le promoteur. Le gouvernement a néanmoins continué de foncer, et de participer activement aux négociations entre Air Canada et les promoteurs.

C'est en définitive le gouvernement qui a consenti les concessions nécessaires pour amener Air Canada à accepter l'accord, sacrifiant ainsi les bénéfices élevés qui justifiaient au départ le choix de la proposition de Paxport alors que celle de Claridge reconnaissait, comme le Comité d'évaluation l'a signalé, les réalités de l'industrie du transport aérien pendant la récession, et n'aurait pas exigé la renégociation immédiate des baux. La question demeure : Pourquoi le gouvernement s'est-il entêté à conclure un accord?

Le «sandwich d'Air Canada»

Bon nombre des concessions faites par le gouvernement au cours des négociations ont été justifiées devant le Comité par le «sandwich d'Air Canada» : les droits détenus par Air Canada, selon le document dit des «principes directeurs» de 1989 qui n'a été révélé aux promoteurs qu'une fois le processus bien avancé. Le président de Claridge Properties Ltd. a dit au Comité que la révélation des droits revendiqués a été un dur coup. [*Délibérations du Comité*, le mardi 12 septembre 1995, fascicule n° 17, 17:14] Cela a eu d'énormes répercussions sur les négociations. Les preuves recueillies montrent toutefois qu'on en a certainement exagéré l'incidence, et que certaines parties ont peut-être même manipulé leur impact à leurs propres fins.

Pour résumer brièvement les antécédents du «sandwich d'Air Canada», disons que des travaux de rénovation s'imposaient à l'aérogare 2 à la fin des années 80. En 1989, Air Canada «a proposé une association en vertu de laquelle la compagnie investirait 65 millions de dollars, soit les trois quarts du coût de l'ensemble des améliorations requises à la partie de l'aérogare 2 réservée aux vols intérieurs, tandis que le reste serait payé par Transports Canada.» [Témoignage de M. Dominic Fiore (retraité), directeur principal des biens immobiliers, Air Canada, *Délibérations du Comité*, le mercredi 16 août 1995, fascicule n° 12, 12:75-76]

Il restait alors huit ans avant l'expiration du bail d'Air Canada. Comme le disait M. Fiore :

«Pour compenser le fait qu'Air Canada allait assumer la plus grande part des frais de rénovation des installations, Transports Canada a convenu de louer l'aérogare 2 à la compagnie pour une longue période. Les modalités de l'entente de location constituent les principes directeurs du bail d'Air Canada. Ces modalités portent la date du 26 juillet et ont été ratifiées, sauf erreur, en août 1989.» [*Délibérations du Comité*, le mercredi 16 août 1995, fascicule n° 12, 12:76]

Ces «principes directeurs,» qu'avait signé le sous-ministre des Transports de l'époque, M. Glen Shortliffe, faisaient état d'un bail d'une durée de 20 ans assorti de deux options de prolongation de dix ans chacune pour les locaux d'exploitation actuels de la ligne aérienne. [«Principes directeurs des négociations du bail d'Air Canada, aérogare II», en date du 26 juillet 1989, doc. du Comité 00253] Un bail d'une durée possible de 40 ans était donc envisagé entre Air Canada et Transports Canada.

Le statut juridique de ce document, et sa pertinence pour le projet de réaménagement des aérogares 1 et 2, a été discuté en long et en large devant le Comité. La demande de propositions n'en faisait pas mention explicitement; elle faisait allusion aux 65 millions de dollars investis par Air Canada dans l'aérogare 2, et précisait uniquement que :

«Air Canada a fait ces investissements dans l'espoir qu'elle pourrait en recueillir les avantages sur une période raisonnable et normale d'amortissement. Air Canada détient à l'heure actuelle un bail pour les locaux qu'elle occupe dans l'aérogare 2. La durée de ce bail et les options de renouvellement prendront fin en 1997.» [Demande de propositions, p. 27]

La sous-ministre des Transports au moment de la publication de la DP en mars 1992, M^{me} Huguette Labelle, nous a dit qu'aux yeux de Transports Canada le seul document légal officiel en vigueur entre Air Canada et le gouvernement était le bail qui se terminerait en 1997 :

«Je pense que Transports Canada a toujours eu pour position que le bail qu'il avait avec Air Canada était le document officiel qui déterminerait, si vous voulez, toute relation future avec Air Canada. À l'expiration de celui-ci, il faudrait bien sûr négocier une autre entente, mais les lignes directrices devaient servir de point d'appui pour la négociation de la nouvelle entente avec Air Canada.» [*Délibérations du Comité*, le mardi 1^{er} août 1995, fascicule n° 8, 8:50]

Les principes directeurs ne se trouvaient pas dans la salle des données mises à la disposition des proposants pour les aider à préparer leurs propositions.

M. Broadbent, qui n'a appris l'existence de ce document qu'une semaine ou deux après son entrée en fonction, l'a jugé «alarmant». [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:96] Il s'est dit grandement étonné que le document ne se soit pas trouvé dans la salle des données, et est venu tout près de laisser entendre qu'il s'agissait d'une tentative délibérée de sabotage du projet de privatisation de la part des fonctionnaires :

«Comment une DP peut-elle être lancée dans un Ministère dirigé par des gens compétents lorsqu'on sait qu'il existe un document où l'on promet de louer à d'autres ce vous cherchez à louer au moyen de la DP?» [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:96-97]

En réalité, comme le Comité l'a appris, les fonctionnaires des Transports étaient tout à fait conscients des principes directeurs au moment de l'élaboration de la DP. Il a été décidé qu'il n'y avait pas lieu de mettre le document dans la salle des données et que son contenu ne devrait pas se refléter dans la DP puisqu'il ne s'agissait pas, selon M. Desmarais, «d'un accord exécutoire. Seules les ententes exécutoires ont été placées dans la salle de documentation.» [*Délibérations du Comité*, le mardi 15 août 1995, fascicule n° 11, 11:32-33]

La décision a été d'autant plus facile à prendre que, lorsqu'on l'a consultée pendant l'élaboration de la DP, Air Canada n'a pas soulevé le document des principes directeurs de 1989. La société demandait, dans une présentation faite à des fonctionnaires des Transports à l'époque, que son bail non résiliable, qui vient à expiration le 30 avril 1997, soit pleinement reconnu et que les droits d'Air Canada en vertu de ce bail, y compris la révision des loyers en se fondant sur les politiques actuelles de recouvrement des coûts, soient protégés et maintenus. [Lettre de M. G.P. Mende, directeur, Aménagement des aéroports, Air Canada, à M. Wayne Power, en date du 6 décembre 1991, doc. du Comité 000483, page 520229]

Air Canada voulait en outre un bail de 30 ans, assorti de deux options de prolongation pour une durée de 15 ans chacune, ainsi que l'indemnisation complète du coût non amorti de ses investissements de 66,9 millions de dollars dans les travaux de rénovation en cours à l'aérogare 2. [Lettre de M. G.P. Mende, directeur, Aménagement des aéroports, Air Canada, à M. Wayne Power, en date du 6 décembre 1991, doc. du Comité 000483, page 520230]

Il ressort donc clairement qu'au moment de l'élaboration de la DP, Air Canada ne prétendait pas que les principes directeurs de 1989 étaient exécutoires ou en vigueur.

Les dispositions pertinentes de la DP ont été transmises à Air Canada pour examen en vue d'obtenir ses commentaires avant de lancer le processus. Air Canada n'a fait aucun commentaire visant à contester ce document ou l'affirmation que le bail et les options de prolongation viendraient à expiration en 1997. [Message télécopié en date du 3 janvier 1992 de M. Wayne Power à M. Julien DeSchutter d'Air Canada, doc. du Comité 000483, p. 520233]

D'autre part, Paxport et Air Canada entretenaient une relation de travail très étroite au cours de la période où les principes directeurs de 1989 ont été établis, et cette situation a persisté au moins jusqu'en juillet 1991.³⁷ De juin 1989 jusqu'à une date assez avancée de 1991, M. Hession a rencontré périodiquement des représentants d'Air Canada pour s'assurer que la ligne aérienne était bien au courant et satisfaite des projets de Paxport à l'égard de l'aéroport, et faire ainsi de Paxport un candidat crédible aux yeux de Transports Canada.

M. Hession faisait encore état, en juillet 1991, de rencontres avec des représentants d'Air Canada. «Il est devenu manifeste dès le début de la réunion qu'Air Canada nous tenait en haute estime. Ses deux représentants ont laissé clairement entendre que, s'il doit y avoir un promoteur privé pour les aéroports 1 et 2, ils continuent de souhaiter que le choix porte sur nous. Ils ont également affirmé qu'ils ne sont actuellement en discussion ou en tractation avec aucun autre promoteur et n'ont pas l'intention d'en avoir à l'avenir.» [Note de M. Hession à M. Don Matthews et M. Jack Matthews, en date du 12 juillet 1991]

En réalité, Paxport et Air Canada avaient conjugué leurs efforts en juin 1990 en vue de présenter à Transports Canada une proposition spontanée pour le réaménagement de l'aéroport 2. La correspondance reçue de M. Hession fait état de discussions entre Paxport et Air Canada concernant le plan d'affaires sur lequel Air Canada et Paxport s'appuieraient pour négocier un marché (bail, etc.) à la suite d'une décision gouvernementale. [Note intitulée «Proposition d'Air Canada/Paxport», de M. Ray Hession à M. Don Matthews, M. Jack Matthews et M. Peter Goring, en date du 29 mai 1990, doc. du Comité 5700-1.35/P1-13, 1-#0268]

Il semble difficile à croire que Paxport n'ait pas interrogé Air Canada sur les conditions de son bail. Il est aussi peu croyable qu'Air Canada n'ait pas mentionné les

³⁷ Une note interne de Paxport montre clairement que M. Hession était en rapport étroit avec des dirigeants d'Air Canada au moment où ceux-ci se préparaient à soumettre leur énoncé des exigences à Transports Canada en vue de la demande de propositions. Voir la note de M. Ray Hession à M. Don Matthews et M. Jack Matthews, datée du 6 mars 1991, faisant état d'une conversation téléphonique avec M. Doug Port d'Air Canada au cours de la matinée.

principes directeurs de 1989, établis et signés au moment même où Air Canada était en pourparlers avec Paxport.

En réponse aux questions du sénateur Céline Hervieux-Payette, les représentants d'Air Canada ont déclaré que leurs discussions avec Paxport ont toujours été fondées sur les principes directeurs de 1989 :

Le sénateur Hervieux-Payette : Est-ce que ce plan d'affaires ou cette entente financière conclue avec Paxport aux termes de la proposition spontanée tenait compte des principes directeurs...?

M. Fiore : [...] Je pense avoir dit que nous avons conclu une entente relativement à la première étape et que nous allions obtenir un bail à long terme. Cette entente précisait toutes les modalités du bail à long terme qui allait entrer en vigueur en 1997, au moment de l'expiration du bail en cours.

[...]

Nous avons été conséquents tout au long du processus. Que ce soit avec Transports Canada, avec Paxport ou avec la PDC, nous avons toujours fait valoir les mêmes points en ce qui a trait aux principes, au bail à long terme et à tout le reste. [*Délibérations du Comité*, le mercredi 16 août 1995, fascicule n° 12, 12:86-87]

L'avocat du groupe Matthews, M. Gordon Baker, a nié que Paxport ait eu connaissance des principes directeurs. [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:9-10] Dans un document présenté au Comité, il prétendait que les principes directeurs n'ont été «révélsés, dans une lettre à Jack Matthews, président de Paxport Inc., et Peter Coughlin, président de T3LP Co. Investments Inc., (que) le 16 juin 1993,» ce qui constituait selon lui une «façon trompeuse» de présenter la situation aux proposants. [«Analyse de l'examen du dossier de l'aéroport Pearson,» de Gordon R. Baker, en date du 31 mai 1994]

Les documents de la preuve n'appuient pas les affirmations de M. Baker. Une note concernant une réunion du 3 mars 1993 entre la sous-ministre des Transports, M. Richard LeLay (chef de cabinet du ministre des Transports, l'honorable Jean Corbeil), M. Keith Jolliffe et M. Robert Green de Transports Canada, et des représentants de Paxport, dont M. Jack Matthews, montre que M. Matthews était bien conscient à cette date de la position d'Air Canada, à savoir qu'elle détenait un bail de 60 ans. La note indique :

«Matthews a affirmé qu'Air Canada prétend avoir un bail de 60 ans et non seulement un bail qui vient à expiration en 1997.» [Conférence téléphonique entre Driedger/Heed/Desmarais et Barbeau/Jolliffe, le 4 mars 1993, doc. du Comité 00189]

De toute manière, l'incidence du différend était claire. Air Canada s'est servie de son éventuel bail de 40/60 ans comme moyen de pression pour faire différer les fortes hausses

de loyer exigées dans la proposition de Paxport (devenue la PDC). Dans l'intervalle, la crainte que les fonctionnaires de Transports Canada aient manqué d'une manière ou d'une autre à leurs obligations dans le cadre du processus de la DP devenait un moyen de pression considérable pour Paxport et Claridge dans leurs négociations avec le gouvernement.

M. Broadbent a déclaré que sans le problème causé par le fait que le bail de 40 ans n'ait pas été dévoilé, il était «fermement convaincu que nous aurions conclu l'affaire à des conditions légèrement plus avantageuses pour le gouvernement.» [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:100] Il existait bel et bien un «sandwich d'Air Canada», mais c'était le gouvernement canadien, et le peuple canadien en particulier, qui se trouvaient coincés au milieu.

Concessions obtenues par Air Canada et perdues par les autres transporteurs aériens

Dans l'entente finale, les 350 millions de dollars prévus pour les travaux de construction aux étapes 1A et B devaient servir au réaménagement de l'aérogare 2. Air Canada acceptait de verser des loyers plus élevés après l'expiration de son bail actuel en mai 1997, en contrepartie de quoi le gouvernement réduisait son loyer foncier de 15 p. 100, ce dont le promoteur ferait bénéficier les lignes aériennes. [Voir la lettre de M. Bill Rowat à M. Dominic Fiore en date du 21 septembre 1993, doc. du Comité 000887; le témoignage de M. R.A. Morrison, vice-président, Communications, Relations avec le gouvernement et l'industrie, Air Canada, *Procès-verbaux et témoignages du Comité permanent des transports*, le mardi 31 mai 1994, fascicule n° 8, 8:9; et le témoignage de M. Rowat, *Délibérations du Comité*, le mercredi 16 août 1995, fascicule n° 12, 12:9]

Le gouvernement acceptait donc ainsi de subventionner Air Canada et les autres lignes aériennes en réduisant les bénéfices de l'État afin de les persuader de signer des baux et de permettre de conclure un marché avec la PDC. Cela allait encore une fois à l'encontre de la DP, dans laquelle le gouvernement s'engageait à ne pas accorder de subventions.

La population canadienne s'est retrouvée dans la situation d'avoir à faire les frais du projet de réaménagement. Les promoteurs indiquaient clairement qu'ils feraient absorber leurs coûts par les lignes aériennes, qui les imputeraient à leurs passagers. Les Canadiens étaient censés y trouver leur compte du fait des bénéfices élevés encaissés par l'État. Ces derniers ont cependant été réduits par deux fois, lorsque 33 millions de dollars en loyers ont été différés pour subventionner le programme de démarrage rapide des travaux d'un coût de 96 millions de dollars, et lorsque les loyers fonciers ont été coupés de 15 p. 100 pour subventionner les loyers versés aux promoteurs par les lignes aériennes.

Transports Canada est même allé plus loin pour rallier Air Canada à l'accord en excluant les autres transporteurs aériens du processus de négociation. Le 29 juin 1993, le

Sous-comité de l'aérogare 1 du Comité des transporteurs aériens a écrit à Paxport, à l'honorable Jean Corbeil et à M. Chern Heed (directeur général de l'aéroport Pearson) pour protester contre le fait d'avoir été tenu à l'écart du processus de négociation et les hausses de loyer anticipées :

«Les transporteurs de l'aérogare 1 étaient consternés d'apprendre que Transports Canada avait donné au préalable comme instruction à Paxport de ne discuter des plans de réaménagement qu'avec Air Canada. Notre exclusion n'était pas justifiée.

Au cours de sa présentation, M. Trevor Carnahoff a déclaré clairement que les étapes établies sont liées directement aux hausses de trafic voyageurs prévues de 20 millions en 1992 à 35 millions en 1999. Comment êtes-vous arrivé à une hausse de 75 p. 100 étalée sur cette période de sept ans? N'êtes-vous pas conscient que la croissance du trafic a été négative depuis cinq ans? Cette extrapolation n'est pas réaliste.

Votre plan de recouvrement de votre investissement de 750 millions de dollars par une augmentation des ventes au détail, des recettes des parcs de stationnement et des loyers calculés en fonction des coûts ne l'est pas davantage. La construction de l'aérogare 3 reposait sur la même formule et chacun peut constater que c'est un désastre financier jusqu'ici. Nous refusons de nous mettre dans une situation semblable.

Nous aimerions rappeler à Paxport et au gouvernement du Canada que les deux principaux transporteurs aériens (Air Canada et Canadien International) ont perdu, au cours des 90 premiers jours de 1993, 4,5 millions de dollars par jour, ce qui représente une perte totale de 405 millions de dollars pour le premier trimestre. Les transporteurs aériens des États-Unis logés à l'aérogare 1 sont aux prises avec les mêmes difficultés financières.

Le moment est-il bien choisi pour accroître nos frais d'exploitation à l'aéroport international Pearson de 500 p. 100, ce qui est une estimation prudente de l'impact de votre proposition de 750 millions de dollars?

Qui restera-t-il pour faire les frais de votre extravagance?» [Lettre de Carole Pitre, présidente, Sous-comité de l'aérogare 1 du Comité des transporteurs aériens à Paxport Inc., en date du 29 juin 1993, doc. du Comité 001088, souligné dans le document original]

Nouvelles mises en garde des fonctionnaires au sujet de l'accord

Avec le recul, les nombreuses lacunes de cet accord sautent aux yeux. Les documents révèlent toutefois que des fonctionnaires ont maintes fois tenté de les signaler à l'époque.

Le secrétaire du Conseil du Trésor, M. Ian Clark, par exemple, adressait une note au président du Conseil du Trésor, le 20 juillet 1993, pour lui indiquer que plusieurs aspects des initiatives concernant l'aéroport Pearson inquiétaient le Secrétariat. Il énumérait ensuite les éléments suivants :

- le réaménagement des aérogares 1 et 2 coûtera vraisemblablement très cher au gouvernement pour rallier l'appui d'Air Canada et(ou) obtenir des concessions de Mergeco;
- convaincue que le gouvernement veut à tout prix ou presque conclure un marché, Mergeco cherche à lui faire assumer tous les risques par des garanties sur les volumes de passagers, des loyers différés et l'établissement probable d'une RIP;
- Mergeco s'expose dans l'ensemble à peu de risques, et pourtant les taux de rendement prévus sont élevés (14 à 16 p. 100 sur la durée de 57 ans du bail);
- l'aéroport pourrait perdre de son efficacité à cause de la fragmentation des opérations : trois baux distincts (aérogares 1 et 2, pistes et aérogare 3) assujettis à deux niveaux de bureaucratie (Transports Canada et une AAL); et
- le rôle d'une AAL deviendrait assez limité, et le gouvernement s'exposerait à des critiques pour avoir refusé à des entités de Toronto l'occasion de gérer l'aéroport dans le cadre d'une AAL, comme il l'a fait pour quatre autres grands aéroports l'an dernier.

Le SCT préférerait que le ministère des Transports poursuive des négociations accélérées avec une AAL de Toronto et lui cède la responsabilité des projets de réaménagement des aérogares 1 et 2 et des pistes. Cela irait dans le sens de la politique adoptée pour d'autres grands aéroports internationaux. Ce ne serait peut-être pas possible toutefois pour les aérogares 1 et 2 à moins que les négociations avec Mergeco ne s'effondrent.» [«Note au Président» du secrétaire du Conseil du Trésor, M. I.D. Clark, en date du 20 juillet 1993, doc. du Comité 002052.)

Le Conseil du Trésor n'était pas seul à faire ressortir les graves lacunes de l'entente. Un mois plus tôt, l'un des membres clés de l'équipe de négociation de Transports Canada, M. Keith Jolliffe, avait rédigé une note intitulée «Rêver en couleurs : Le projet de réaménagement des aérogares de l'aéroport Pearson,» où il reprenait chacun des objectifs du gouvernement énoncés dans la DP pour intéresser le secteur privé au projet de réaménagement. Il opposait ensuite chacun de ces objectifs à l'entente, en signalant pratiquement dans chaque cas à quel point le gouvernement s'était éloigné de son but initial. Les comparaisons sont intitulées, à bon escient, «Qu'est-ce qui ne va pas dans ce tableau?»

M. Jolliffe note entre autres que :

- le rôle de propriétaire de Transports Canada serait considérablement plus vaste que prévu, et non pas réduit comme l'indiquait la DP;
- il n'y aurait pas de réelles «synergies» entre les trois aérogares : l'aérogare 3 serait exploitée, avec sa propre structure de gestion, par une entité distincte, la Lockheed Air Terminals, tandis que les aérogares 1 et 2 seraient exploitées par d'anciens fonctionnaires de Transports Canada;
- en acceptant de différer une partie du loyer, la clause de déroutement, l'indemnisation et d'autres clauses précises, le gouvernement accepte d'assumer une partie du risque pris par le secteur privé.

Au sujet des bénéfices financiers appropriés pour l'État, M. Jolliffe note que :

«La stratégie des négociations serrées de Claridge a remplacé les assurances ou les hypothèses douces de la proposition de Paxport. Il s'ensuit que l'entente glisse, sur la pente financière, des bénéfices pour l'État envisagés par Paxport à ceux proposés par l'ATDG.»

C'est exactement ce qui s'est produit. [«Rêver en couleurs», en date du 24 juin 1993, doc. du Comité 002077]

Le 14 septembre 1993, M. Wayne Power écrivait à M. Peter Coughlin pour exprimer les préoccupations que l'entente inspirait à Transports Canada. Il s'agissait notamment de la capacité des aérogares et de l'incidence sur les autres transporteurs aériens des engagements envers d'Air Canada. Par exemple, écrivait M. Power :

«La proposition de Paxport insistait sur la capacité élevée des aérogares, une fois réaménagées, et il est évident que les déclarations publiques ont créé l'impression d'une forte hausse de capacité. Mais, comme vous le savez, Transports Canada a exprimé des réserves au sujet du degré d'expansion de la capacité globale des aérogares en général et plus particulièrement du nombre de portes/postes de stationnement. Une fois réaménagées, les aérogares auront essentiellement, au quai d'embarquement, le même nombre de postes de stationnement qu'à l'heure actuelle; pourtant, le nombre de postes que la société possède et contrôle est une des composantes clés de l'accord d'Air Canada ainsi que de la politique d'accès et de prix de T1T2LP.» [Lettre de M. Wayne Power à M. Peter Coughlin en date du 14 septembre 1993, doc. du Comité 001672]

Un projet de réponse, reçu du consortium en date du 19 septembre 1993, a été diffusé aux fonctionnaires des Transports pour avoir leurs commentaires. M. Power a transmis le projet de réponse au négociateur en chef, M. Rowat, sous couvert de la note suivante :

«Au lieu de nous rassurer sur l'existence d'un plan bien réfléchi, ce projet de réponse indique que Paxport en est encore à l'étape de la conception et ne possède pas les réponses que nous cherchons, de pair avec les lignes aériennes. **Inutile d'insister pour avoir des réponses qui n'existent pas pour l'instant.**» [Feuille d'envoi par télécopieur de M. Power à M. Rowat, en date du 22 septembre 1993, doc. du Comité 000730; c'est nous qui soulignons]

En ajoutant ses commentaires à ceux de M. Power, M. Desmarais suggérait de rappeler au consortium que le but du processus n'était pas d'assurer une salle d'attente agréable aux voyageurs. [Note de M. J.N. Desmarais à M. Power en date du 22 septembre 1993, doc. du Comité 000730]

Quinze jours plus tard, l'entente était néanmoins conclue.

Les contrats entre parties ayant des liens de dépendance : le dessus du panier

Paxport et Claridge ont toutes deux soutenu que l'entente était juste envers les contribuables canadiens, faisant valoir que pendant les neuf premières années du bail, les partenaires de T1T2 Limited Partnership n'ont pas reçu d'argent. [Voir le document *Schedule A to the Statement of Claim by T1T2 Limited Partnership Upon Her Majesty the Queen in Right of Canada*, paragraphe 1, présenté au Comité le 8 septembre 1995 par M. Hillel W. Rosen au nom de T1T2 Limited Partnership et le témoignage de M. Peter Coughlin, président de Claridge Properties Ltd., *Délibérations du Comité*, le mardi 1^{er} septembre 1995, fascicule n° 17, 17:16]

Cela ne tient pas compte des nombreuses ententes particulières qui devaient permettre aux membres du consortium de bénéficier du réaménagement de l'aéroport Pearson. Il est exact de dire qu'en théorie, les contrats dont on a pris connaissance au cours des enquêtes du Comité n'avaient pas été conclus avec les associés de T1T2 Limited Partnership, mais avec des personnes morales connexes – des sociétés mères des associés de T1T2, des filiales, ou d'autres compagnies appartenant aux mêmes personnes qui contrôlaient un associé de T1T2 et contrôlées par celles-ci (par ex. M. Don Matthews et M. Jack Matthews).

Ces contrats auraient permis aux membres du consortium de retirer beaucoup plus de Pearson que le taux de rendement net négocié de 14 p. 100 déterminé par Deloitte &

Touche.³⁸ M. Stehelin, de Deloitte & Touche, a été très clair à ce sujet dans le rapport, où le taux de rendement de 14 p. 100 est jugé raisonnable :

«Certains des frais de gestion de la construction payés au groupe Matthews pendant l'aménagement et des honoraires d'experts-conseils versés à d'autres membres du groupe en échange de divers services ne sont pas inclus dans le calcul du TRI de 14 p. 100. Nous vérifierons le total de ces sommes avant impôt et présenterons nos commentaires à ce sujet dans un autre document». [Extrait du rapport de Deloitte & Touche du 17 août 1993, p. 6]

Ces calculs n'ont jamais été faits. [Témoignage de M. Paul Stehelin, *Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:22] Cependant, M. Stehelin a déclaré qu'en vertu du régime proposé par le consortium, un certain nombre de dépenses seraient «enterrées sous un chiffre rangé dans la rubrique «frais de gestion». [*Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:21] M. Stehelin a décrit les autres types de frais, dont les frais de construction et les honoraires d'experts-conseils payés aux compagnies associées au groupe Matthews, comme «des dépenses non habituelles. Elles n'étaient pas liées à l'exploitation de l'aéroport, ni directement, ni au moment où elles étaient engagées». [*Ibid.*] M. Stehelin a admis qu'il s'agissait, en partie, de «sommes que les investisseurs auraient touchées en sus du taux de rendement». [*Ibid.*]

Voici un bref résumé des accords au sujet desquels le Comité a entendu des témoignages :

1. Le plus inhabituel de ces accords est daté du 4 octobre 1993 et a été conclu entre T1T2 Limited Partnership (signé par M. Peter Coughlin et M. Norman Spencer) et Matthews Investments 4 Inc., compagnie dont il n'est question nulle part ailleurs dans les documents.³⁹ Voici ce que dit intégralement ce document :

«[La T1T2 Limited Partnership] accepte, par la présente, de vous payer des honoraires d'expert-conseil de 350 000 \$ par an pendant dix (10) ans (sur une base mensuelle), le premier versement étant effectué le 31 octobre 1993.

³⁸ En fait, M. Allan Crosbie a constaté que le taux de rendement avant impôt des promoteurs, sans inclure ces nombreuses ententes particulières, était de 23,6 p. 100. Il en est question plus loin dans le texte.

³⁹ Après vérification, on a constaté que la société Matthews Investments 4 Inc. n'avait été constituée que le 30 septembre 1993, une semaine à peine avant que cet accord de 3,5 millions de dollars ne soit signé. M. Donald Matthews est inscrit à titre de président du conseil et président, et un certain M. Richard J. Lachcik, d'Oakville, en Ontario, à titre de premier directeur. Aucun autre renseignement n'a pu être obtenu au sujet de cette compagnie, de ses actionnaires, de ses activités (s'il y en a) ou de ses employés (s'il y en a également).

Le présent contrat ne peut être résilié pour aucune raison. Il est cessible et peut être cédé par vous.» [Doc. du Comité 001573]

Il s'agit d'une promesse de verser 3,5 millions de dollars en «honoraires d'expert-conseil», sans **mention aucune des services de consultation ou autres à fournir**. La clause de «non-résiliation» fait en sorte que **le contrat ne peut être résilié, que des services soient fournis ou non et que ces services soient satisfaisants ou non**.

Au cours des audiences, le sénateur John Bryden a fait la remarque suivante : **«Ce contrat m'a bien l'air d'être simplement un billet à ordre. Je promets de verser 350 000 \$ par année pendant 10 ans à compter du 31 octobre»**. [*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 28, 28:17; c'est nous qui soulignons] **Et Matthews Investments 4 Inc. pourrait le céder, à son gré, à qui que ce soit – à M. Don Matthews, à M. Jack Matthews ou même, en théorie, à un ami.**

2. Dans une lettre du 4 octobre 1993 de la T1T2 Limited Partnership, Matthews Contractors Inc. était engagée comme «gestionnaire de la construction pour le projet de réaménagement des aéroports de Pearson». Cette lettre n'est guère précise et souligne vaguement que l'importance de ces services et des honoraires connexes doivent être généralement conformes à l'accord proposé antérieurement. Ni le ministère des Transports ni le Comité n'ont obtenu copie de cet accord. [Voir la lettre du 4 octobre 1993 jointe à titre de pièce justificative n° 11 à la déclaration sous serment de John N. Desmarais, n° 3, dans l'affaire opposant la T1T2 Limited Partnership et 2922797 Canada Inc. à Sa Majesté la Reine du chef du Canada devant la Cour de l'Ontario (Division générale), dossier n° 94CQ55762]

Après vérification, on a constaté que la société Matthews Contractors Inc. n'existait que depuis le 29 septembre 1993, ce qui laisse supposer qu'elle n'a été constituée qu'aux seules fins de la conclusion de ce contrat.

3. Paxport International Inc. devait obtenir de T1T2 un minimum de 4 millions de dollars pendant cinq ans pour promouvoir, à l'échelle internationale, la technologie et le savoir-faire du Canada en matière de développement aéroportuaire. Même si cette activité ne semble avoir aucun lien avec la gestion et l'exploitation de l'aéroport Pearson, il en était question dans une clause de T1T2 dans l'accord relatif aux avantages industriels, l'un des contrats concernant l'aéroport Pearson. Il semble que les 4 millions de dollars devaient venir des recettes tirées de l'aéroport Pearson – bien que le but poursuivi, outre le profit que le Canada pouvait en tirer, était essentiellement de créer de nouvelles occasions d'affaires pour Paxport. [Voir l'article 3.3 de l'Accord sur les avantages industriels conclu entre la T1T2 Limited Partnership et Sa Majesté la Reine du chef du Canada, le 7 octobre 1993]

4. Le 15 mai 1992, Agra Industries Limited concluait avec Paxport Management Inc. un accord prévoyant ceci :

« Compte tenu de sa participation au consortium, AGRA pourra, sur une base privilégiée, sur décision du gestionnaire du projet, fournir des services de génie et d'autres services connexes aux fins du réaménagement des installations aéroportuaires.»

Agra Industries Limited était l'actionnaire majoritaire de 2895820 Canada Limited, associé de T1T2, et de Allders International Canada Limited, à qui appartenait deux des associés de T1T2.

De plus, Allders International Canada Limited avait un bail de 25 ans pour l'exploitation des boutiques hors taxes aux aéroports 1 et 2.

5. Norr Partnership Limited devait fournir des services de planification, d'architecture et de génie et veiller à la coordination générale de la conception pour T1T2. Cette société était actionnaire de Norr Group Consultants Ltd qui, de son côté, était propriétaire de 1027777 Ontario Limited, un associé de T1T2.

6. Pearson Airport Management a été engagée par T1T2 pour gérer les aéroports 1 et 2. Pearson Airport Management est liée à Claridge Holdings Inc. à titre d'associé.

7. Le 4 octobre 1993, Bracknell Corporation a conclu deux accords avec T1T2 :

- (1) un accord de gestion et d'exploitation, et
- (2) un accord pour l'installation de câbles mécaniques, électriques et de communications.

Bracknell Corporation était propriétaire des entreprises 1045433 Ontario Inc. et 1045434 Ontario Inc, toutes deux associées à T1T2.

8. Patrick Brigham, à titre de «membre fondateur du groupe Paxport» (M. Brigham et la famille Brigham étaient propriétaires de Hartay Enterprises Inc., société associée à T1T2 Limited Partnership), a obtenu le droit exclusif de fournir des services d'agent de voyages aux trois aéroports de l'aéroport Pearson. Cet accord est daté du 4 octobre 1993, même si M. Brigham ne l'a accepté que le 10 novembre 1993, bien après la défaite du gouvernement conservateur et, en fait, après que M. Nixon a été chargé d'examiner les accords de l'aéroport Pearson. [Voir l'accord du 4 octobre 1993 joint à titre de pièce justificative n° 5 à la déclaration sous serment de John N. Desmarais, n° 3, dans l'affaire opposant la T1T2 Limited Partnership et

2922797 Canada Inc. à Sa Majesté la Reine du chef du Canada devant la Cour de l'Ontario (Division générale), dossier n° 94CQ55762]

9. Le 4 octobre 1993, Lockheed Air Terminal of Canada Inc. («LATOC») a conclu un «accord de consultation» avec la T1T2 Limited Partnership. LATOC était propriétaire de LAH Limited, commanditaire de T1T2 Limited Partnership. En vertu de cet accord, LATOC devait toucher 450 000 \$ par an pendant sept ans ou jusqu'à ce que le réaménagement des aéroports 1 et 2 soit terminé, selon la dernière de ces éventualités. En retour, LATOC devait servir d'«expert-conseil» en matière de gestion, d'exploitation, d'aménagement et de réaménagement des aéroports 1 et 2. [Voir l'accord du 4 octobre 1993 joint à titre de pièce justificative n° 10 à la déclaration sous serment de John N. Desmarais, n° 3, dans l'affaire opposant la T1T2 Limited Partnership et 2922797 Canada Inc. à Sa Majesté la Reine du chef du Canada devant la Cour de l'Ontario (Division générale), dossier n° 94CQ55762]

À eux seuls, ces contrats auraient rapporté plus de 170 millions de dollars à ces sociétés, d'après ce qu'elles ont elles-mêmes réclamé dans le litige qui les oppose au gouvernement du Canada. **Ce montant de 170 millions de dollars aurait largement dépassé le taux de rendement négocié que le gouvernement considérait comme juste pour les promoteurs.**

Le principal problème au sujet de ces contrats conclus entre des parties ayant des liens de dépendance tenait probablement au fait que le gouvernement avait donné carte blanche aux promoteurs. **Le gouvernement avait renoncé à tout pouvoir réel de contrôler les transactions intéressées faites par le consortium.** Les accords de l'aéroport Pearson prévoyaient seulement que le gouvernement avait le droit de recevoir des copies des contrats conclus entre des parties ayant des liens de dépendance; tandis que les contrats étaient censés être conclus à des conditions «équivalentes, sur le plan commercial, à celles qui pourraient être négociées avec une partie indépendante», le gouvernement n'avait pas le pouvoir de rejeter, de contester ou d'approuver les modalités de ces accords. [Voir l'article 2.5 du document *Terminals 1 and 2 Complex Development Agreement*]

Le gouvernement n'a même pas cherché à exercer son droit minimal de revoir les contrats conclus entre des parties ayant des liens de dépendance. L'honorable Jean Corbeil, qui était ministre des Transports à l'époque, a dit qu'il n'avait jamais entendu parler du contrat de 3,5 millions de dollars accordé à Matthews Investments 4 Inc., le seul contrat conclu entre des parties ayant des liens de dépendance au sujet duquel il a été interrogé. Il a vu ce contrat pour la première fois pendant les audiences. [Témoignage de l'honorable Jean Corbeil, *Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:91]

Le Comité a pu constater très clairement que le gouvernement n'avait pas exercé de surveillance sur les contrats conclus entre des parties ayant des liens de dépendance. L'équipe

de négociation, qui avait convenu que le gouvernement financerait la part des compagnies aériennes relativement aux coûts de gestion et d'exploitation de l'aéroport, a admis qu'elle ignorait si les paiements effectués dans le cadre de ces contrats devaient être inclus dans ces coûts et être ainsi financés par le gouvernement, les compagnies aériennes et les voyageurs. [Témoignage de M. John Desmarais, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:83-84]

Autres dispositions inhabituelles

M. Stephen Goudge (conseiller juridique de M. Nixon) s'est dit inquiet de constater :

«qu'un certain nombre de déductions permises était inhabituel, dans la mesure où elles permettaient de rabaisser le loyer brut. Je songe notamment aux déductions relatives aux loyers versés par la Couronne ainsi qu'aux mauvaises créances.» [Délibérations du Comité, le jeudi 28 septembre 1995, fascicule n° 27, 27:13]

Toujours à propos de ces clauses, il a mentionné que la Pearson Development Corporation aurait pu incorporer dans le calcul de ses revenus bruts «de nombreuses déductions généreuses, celles qui sont inhabituelles [...] des remises et des remboursements, des versements par Sa Majesté en tant qu'occupant des lieux loués, des mauvaises créances...»[Id. 27:51-52]

Il y avait aussi d'autres modalités inhabituelles, qui «ne protégeaient pas suffisamment l'intérêt public». [Témoignage de M. Stephen Goudge, *Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:12] Par exemple, les accords qui visaient expressément l'aménagement des aérogares 1 et 2 ne prévoyaient pas le retour des aérogares à l'État si jamais les travaux n'étaient pas effectués en entier :

M. Goudge : L'accord prévoit un monopole de 57 ans, peu importe que l'on aille au-delà du stade 1B du développement. ... À mon sens, une entente de réaménagement devrait préciser, et particulièrement dans ce contexte, que si les travaux ne se font pas, le bail devrait retourner à la Couronne. Le but de tout cet exercice était de procéder au réaménagement. ... Je ne comprends pas pourquoi la Couronne devrait permettre que la propriété demeure entre les mains du titulaire du titre à bail si le développement ne se concrétise pas, particulièrement lorsqu'il s'agit d'un avoir de cette importance.[*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:12-13]

M. Goudge a aussi constaté que les recours dont disposait le gouvernement si les promoteurs manquaient à leurs obligations étaient nettement insuffisants. Le gouvernement pouvait reprendre l'aéroport et l'exploiter; c'était là son unique recours. Comme M. Goudge l'a souligné :

«En effet, comme l'objectif même de la Couronne était de se retirer de ce secteur, le fait de l'obliger à faire marche arrière en cas d'inexécution du contrat constitue un recours si draconien qu'on peut être quasiment sûr qu'il ne serait jamais exercé».[*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:14]

M. Goudge a dit que le gouvernement pourrait intervenir :

«avant l'achèvement des travaux et reprendre l'exploitation. À mon avis, ...cela aurait été désastreux pour le gouvernement du Canada. Rien ne pourrait être pire que d'avoir à reprendre un projet d'aménagement laissé en pagaille par le retrait de l'entrepreneur. ...**À mon avis, il n'aurait pu y avoir pire pagaille pour les voyageurs et pour le gouvernement du Canada.**»[*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:40-41; c'est nous qui soulignons]

D'autres dispositions protégeaient également l'intérêt du promoteur aux dépens de celui du public. Par exemple, les dispositions qui prévoyaient que le créancier hypothécaire pouvait réclamer le cautionnement, aux termes de l'hypothèque sur la propriété louée à bail, protégeait très peu le gouvernement. Le Comité a appris qu'en cas de manquement aux termes de l'hypothèque sur la propriété louée à bail, le créancier hypothécaire acquerrait de nombreux droits, sans que le gouvernement puisse s'y opposer ou si peu :

«Le contrat prévoyait que le créancier hypothécaire pouvait réclamer le cautionnement sans devoir terminer les travaux de construction et qu'il pouvait céder le bail à un autre prêteur, auquel cas le gouvernement du Canada se retrouverait dans la situation où il n'exercerait aucun contrôle sur le nouvel exploitant de l'aéroport. **Autrement dit, l'exploitant ne serait plus T1T2, mais une autre entité que le gouvernement du Canada n'aurait pas choisie et sur laquelle il n'exercerait aucun contrôle.** [Témoignage de M. Stephen Goudge, *Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:14; c'est nous qui soulignons]

L'accord ne donnait pas au gouvernement du Canada le pouvoir de refuser que le créancier hypothécaire cède le bail des aérogares. «Le créancier hypothécaire pouvait ... céder le bail à un autre exploitant sur lequel le gouvernement du Canada n'aurait pu exercer aucun contrôle.»[*Ibid.*] Et ce nouvel exploitant pouvait être n'importe qui, même un promoteur sur lequel le Canada n'aurait pu exercer aucun contrôle et qui n'aurait pas rempli les conditions pour présenter une proposition dans le cadre de ce projet, aux termes de la demande de propositions.

Le rendement des investissements

Le Comité a appris que, dans le cadre de l'entente concernant l'aéroport Pearson, le taux de rendement des investissements avant impôt devait être de 23,6 p. 100, un taux largement supérieur à tout autre taux auquel les investisseurs auraient pu s'attendre sur le marché. En permettant un taux de rendement aussi élevé, le gouvernement aurait perdu plus de 250 millions de dollars à la fin du bail. M. Allan Crosbie, analyste financier principal de Crosbie & Company, a déclaré ce qui suit :

M. Crosbie : Du côté du gouvernement, l'entente était évaluée à 842 ou 843 millions de dollars. Si le taux de rentabilité pour les investisseurs était de 17,5 p. 100, ce qui me semble – je vous en dirai plus – un objectif réalisable...

Le sénateur Bryden : Non, je voulais seulement...que les chiffres parlent d'eux-mêmes.

M. Crosbie : Le gouvernement aurait obtenu 200 millions de dollars en plus des 843 millions de dollars.

Le sénateur Stewart : Il a donc laissé 200 millions de dollars sur la table.

M. Crosbie : Selon cette hypothèse, oui, il semble bien que l'on ait laissé 200 millions de dollars sur la table sur 37 ans.

Le sénateur Bryden : Sur 57 ans, on en serait arrivé à 252 millions de dollars?

M. Crosbie : Oui, près d'un quart de milliard de dollars. [*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:21]

M. Crosbie a aussi indiqué au Comité que le pourcentage de 23,6 p. 100 était peut-être bas. Premièrement, il ne comprenait pas ou ne reflétait pas les frais qui auraient été payés aux membres du consortium en vertu des divers contrats conclus entre des parties ayant des liens de dépendance – et il a été montré que ceux-ci auraient rapporté des millions de dollars.

Deuxièmement, **le modèle que Transports Canada a utilisé pour l'évaluation du rendement n'avait pas été préparé indépendamment par ou pour Transports Canada, mais avait été préparé par la Pearson Development Corporation.** [*Délibérations du Comité*, le jeudi 28 septembre 1995, fascicule n° 27, 27:22-23] Comme M. Crosbie l'a souligné :

«Il est assez inusité que l'acheteur dans ses contacts avec le vendeur présente un modèle par trop positif. À mon avis, d'ordinaire, l'acheteur présente un modèle prudent car il n'est pas question de dire au vendeur «Quel marché idéal j'ai

préparé.» [Délibérations du Comité, le jeudi 28 septembre 1995, fascicule n° 27, 27:23]

À noter que c'était la première fois que le Comité entendait dire que le ministère s'était servi d'un modèle fourni par le promoteur.

Le ministère s'est fié à l'opinion exprimée dans une lettre du 17 août 1993 par M. Paul Stehelin, de Deloitte & Touche, pour conclure que le taux de rendement *après impôt* de 14 p. 100 était raisonnable. Cependant, le Comité a appris que «même si la lettre a été écrite au mois d'août, [M. Stehelin] se fondait sur les taux plus élevés du printemps.» [Témoignage de M. Crosbie, *Délibérations du Comité*, le lundi 6 novembre 1995, 1300-7] Il ne semble pas que la lettre ait été modifiée «pour tenir compte des taux qui étaient plus près de ceux qui étaient en vigueur au moment où la lettre a été écrite.» [*Ibid.*]

La firme Deloitte & Touche s'était basée sur un rapport de Price Waterhouse pour conclure que le taux de rendement *après impôt* de 14 p. 100 était raisonnable. Cependant, on a dit au Comité que le rapport de Price Waterhouse considérait comme raisonnable un taux de rendement *avant impôt* de 11 à 13 p. 100. [*Id.* 1300-6] Ce pourcentage aurait été conforme aux résultats d'un rapport préparé par DS Marcil pour Transports Canada dans le cadre d'un autre projet. Dans ce rapport, DS Marcil proposait «que le taux de rendement avant impôt offert aux actionnaires soit de 14,5 p. 100, c'est-à-dire un peu plus élevé que celui prévu par Price Waterhouse mais restant dans la même fourchette.» [*Ibid.*]

Enfin, dans le cas de l'aérogare 3, le taux de rendement avant impôt projeté sur les capitaux propres était de 14,1 p. 100. [*Id.*, 1300-7]

Il a été largement prouvé que le taux de rendement avant impôt de 23,6 p. 100 était beaucoup plus élevé que nécessaire ou approprié. M. Crosbie a dit qu'il se pourrait que le «taux de rendement soit, en fait, supérieur à 23,6 p. 100.» [*Id.*, 1300-12] Le rendement augmenterait si l'on tenait compte du facteur suivant :

«les associés pourraient tirer des profits supplémentaires des concessions, de la construction et des frais de gestion. ... N'oublions pas non plus les synergies obtenues si l'on regroupe le projet T3 avec le projet T1T2. Selon Transports Canada, les synergies créées par le regroupement des deux projets produiraient quelque 2 millions de dollars. De plus, c'est pratiquement une situation de monopole parce que les deux aérogares seraient entre les mains d'un seul groupe,... ce qui se traduirait par des possibilités sur le plan de la fixation des prix...» [*Délibérations du Comité*, le lundi 6 novembre 1995, 1300-11-12]

Le taux de rendement des investissements faits dans le cadre de cette entente était très généreux et cela, directement aux dépens des voyageurs (tarifs plus élevés) et de l'État (taux de rendement moins élevé).

VI. LA SIGNATURE DU CONTRAT

À la fin d'août 1993, l'équipe de négociation avait réussi à régler les questions les plus épineuses qui avaient divisé les parties. [Témoignage de M. Bill Rowat, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:14]

Le 27 août 1993, le décret autorisant le ministre des Transports à conclure des accords relativement à l'aéroport Pearson était pris. [Décret du 27 août 1993, doc. du Comité 001345] M^{me} Jocelyne Bourgon, qui était alors sous-ministre des Transports, a dit très clairement que cette autorisation visait à conférer au ministre des Transports le «pouvoir supplémentaire» dont il avait besoin pour signer les accords, mais que :

« Ce n'est pas parce qu'on a le pouvoir de signature que l'on est obligé de signer[...]. Il ne s'agit pas de juger des circonstances. Donc, ce n'est pas parce qu'on a une délégation de pouvoir que l'on est obligé de l'exercer. » [*Délibérations du Comité*, le mardi 14 septembre 1995, fascicule n° 19, 19:61; c'est nous qui soulignons]

Le 30 août 1993, le ministre des Transports a annoncé que l'on en était arrivé à un «accord général» relativement au réaménagement et à l'exploitation des aérogares 1 et 2 et que cet accord serait finalisé à l'automne. [Communiqué n° 187/93 du 30 août 1993, doc. du Comité 002269]

Le conseiller juridique qui a témoigné a été clair : au 30 août 1993 et, en fait, **jusqu'au 7 octobre 1993 – il n'y avait pas de contrat entre les parties.** Lors de son témoignage, M. Robert Green, c.r., conseiller juridique principal du ministère des Transports, a expliqué qu'il avait expressément demandé que le mot «général» figure dans le communiqué pour qu'il soit clair qu'au 30 août 1993, il n'y avait pas d'accord entre les parties :

M. Green : ...Je me souviens avoir demandé que l'on ajoute le mot «général», parce que je n'avais pas connaissance qu'un accord avait été conclu, ne pensais pas qu'un accord avait été conclu et qu'il me semblait, ainsi que Bill l'a déjà mentionné, qu'il s'agissait d'une simple déclaration que le ministre voulait faire en des termes frappants.

[...]

Le sénateur Lynch-Staunton : ...Quelle est la différence entre un accord général et un accord? Qu'est-ce qu'un «accord général», dans ce cas?

M. Green : Le message que j'essayais de transmettre était simplement qu'il n'y avait pas d'accord. Il y avait peut-être une entente, mais je ne sais pas. [*Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:44]

En fait, les témoins ont dit que des négociations sérieuses s'étaient poursuivies jusqu'à la signature de l'accord. M^{me} Bourgon a dit que **«nous étions encore en train de négocier 24 heures avant que je demande au ministre de signer certains documents»** [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:86; c'est nous qui soulignons. Voir aussi le témoignage de M. Jacques Pigeon, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:14]

M. John Desmarais, de Transports Canada, a dit au Comité qu'il restait un document à terminer à la fin de septembre et que, le 20 septembre 1993, les négociateurs du gouvernement avaient dit au consortium qu'ils ne concluraient pas l'entente tant que ce document ne serait pas finalisé :

«Le 27 août, nous n'avions pas de plan de gestion et d'exploitation. Celui-ci a représenté un gros morceau des négociations dans le courant du mois de septembre et, d'ailleurs, nous avons déclaré, le 20 septembre, que nous ne serions pas disposés à conclure tant que ce plan ne serait pas finalisé.[*Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:15]

Les représentants du ministère de la Justice ont expliqué que la transaction concernant les aéroports 1 et 2 ne comportait «qu'un seul niveau». [Témoignage de M. Jacques Pigeon, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:9] Par conséquent, «les parties signent les documents par avance, sans vouloir se lier elles-mêmes au moment de la signature, mais dans l'intérêt de la simplicité administrative, afin d'être prêtes pour la clôture, à supposer que toutes les autres conditions préalables soient remplies ou que les parties conviennent de procéder à la clôture nonobstant.» [Témoignage de M. Robert Green, *Délibérations du Comité*, le lundi 23 octobre 1995, fascicule n° 29, 29:24] Autrement dit, comme M^{me} Bourgon l'a souligné : «Rien n'est fini tant que tout n'est pas fini». [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:86]

Dans une lettre adressée au président de notre Comité, M. Rowat était formel :

«Je pensais alors, et je pense encore aujourd'hui, que le contrat de Pearson n'était pas conclu tant que tous les documents n'avaient pas été signés par les parties, y compris les documents signés le 7 octobre 1993, et que toutes les conditions préalables à la divulgation des documents n'avaient pas été réunies, ce qui ne s'est pas produit avant que Peter Coughlin et moi ayons signé les documents autorisant la divulgation des documents placés en main tierce». [Extrait de la lettre adressée par M. Rowat au sénateur Finlay Macdonald, le 22 septembre 1995]

Les fonctionnaires ont été formels. À leur avis, il n'y a pas eu d'accord liant les parties avant le 7 octobre 1993. M. Stephen Goudge l'a reconnu, soulignant qu'il n'existe pas de droit des "demi-contrats". [*Délibérations du Comité*, le jeudi 28 septembre 1995,

fascicule n° 27, 27:32] M. Goudge a dit ensuite que «les droits contractuels ... s'appliquaient à compter du 7 octobre, pas avant.»

Interrogé par M. Nelligan au sujet de la responsabilité que le gouvernement aurait pu avoir à l'égard de préjudices s'il avait refusé de conclure l'entente, M. Goudge a dit : «Nous n'en avons pas discuté en détail ... D'après moi, il serait difficile d'inclure dans quelque doctrine de droit que de soit des préjudices potentiels autres que ceux qui découleraient d'une rupture de contrat.» [Id. 27:37]

Le 8 septembre, le Parlement était dissous et la campagne électorale commençait. Au même moment, on publiait dans la presse plusieurs articles exposant des problèmes au sujet de l'entente projetée et du processus qui avait été suivi. [Voir la «Réponse aux points soulevés dans les articles de Greg Weston, journaliste du *Citizen*, le samedi 25 septembre 1993 et le dimanche 26 septembre 1993», le 28 septembre 1993, doc. du Comité 001266]

L'entente projetée est devenu un point central de la campagne. Le 5 octobre 1993, le chef de l'opposition, M. Jean Chrétien, a déclaré publiquement : «J'exhorte la Première ministre à mettre fin à cette entente immédiatement. ... On ne conclut pas une entente comme celle-là trois semaines avant des élections, quand des centaines de millions de dollars sont en jeu. ... Ce que je propose est très simple : mettons la question en veilleuse pendant trois semaines et laissons le prochain gouvernement s'en occuper.» [Extrait d'un article de Patrick Doyle et Bruce Campion-Smith intitulé Halt Deal at airport Chrétien tells PM, *The Toronto Star*, le 6 octobre 1993]

Le lendemain, M. Chrétien était encore plus formel : «Je tiens à dire à toutes les parties concernées que si nous formons le prochain gouvernement, nous examinerons cette entente et si des mesures législatives s'imposent [pour l'annuler], nous les prendrons.» [André Picard et Jane Coutts, Chrétien attacks Pearson deal, *Globe & Mail*, le 7 octobre 1993]

Quand vint le moment de conclure l'entente en octobre, M. Rowat a consulté son sous-ministre pour savoir s'il fallait ou non le faire :

Le sénateur Bryden : Est-il normal que le premier ministre donne directement l'instruction de signer un contrat?

M. Rowat : La situation n'était pas normale. Dans un cas normal, non, ce n'est pas comme cela que les choses se feraient.

Le sénateur Bryden : Qu'est-ce qui était différent?

M. Rowat : Une élection était en cours et cette question suscitait de vives controverses. Après en avoir discuté avec le sous-ministre, Jocelyne Bourgon, celle-

ci était parvenue à la conclusion, et moi aussi, que je devrais avoir des instructions parfaitement explicites si je devais signer ces documents à ce moment-là, à titre de haut fonctionnaire. Je suppose que c'est elle et Glen Shortliffe qui ont décidé de la manière dont ces instructions seraient communiquées, et à qui.» [*Délibérations du Comité*, le jeudi 3 août 1995, fascicule n° 10, 10:75-76]

M^{me} Bourgon a ensuite expliqué qu'avec la dissolution du Parlement, les fonctionnaires avaient besoin de savoir si le gouvernement voulait effectivement conclure l'entente. Par conséquent, vers la fin de septembre, M^{me} Bourgon a demandé conseil au ministre des Transports (avant de lui remettre les documents pour qu'il les signe). [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:57] Voici comment elle a décrit la situation au Comité :

«Après la dissolution du Parlement, il y a une règle générale qui s'applique à la conduite des fonctionnaires. Ce n'est pas un article de loi. C'est une règle générale qui veut qu'à partir de ce moment-là, il faille agir avec prudence. La question se pose alors de savoir qui va décider si on agit ou non avec prudence. Ce n'est pas aux fonctionnaires d'en décider. Il faut s'adresser au ministre ou au premier ministre selon les circonstances.» [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:59]

Le fait que des élections étaient déclenchées n'a pas empêché l'honorable Jean Corbeil, ministre des Transports, de signer un certain nombre de documents le 4 octobre. C'était la première étape de la tentative du gouvernement de lier son successeur à cette entente.⁴⁰

Entre le moment où le ministre des Transports a signé certains des documents et celui où l'entente devait être conclue, soit le 7 octobre, il s'est produit deux événements qui ont amené M^{me} Bourgon à demander des directives précises à la Première ministre sur la conduite à adopter :

M^{me} Bourgon : «Après cela, deux événements supplémentaires se sont produits. Pour le premier, il faut se souvenir que nous étions en pleine campagne électorale. Il y a eu une déclaration du chef de l'opposition dans laquelle il demandait publiquement à la première ministre de tout arrêter – je crois que c'est ce qu'il a dit. Le lendemain, ...le 6, je crois, le chef de l'opposition a par ailleurs déclaré que s'il devait former le gouvernement, il souhaitait revoir l'opération.

⁴⁰ Certains conservateurs membres du Comité ont laissé entendre que le gouvernement était lié et responsable au 30 août 1993, date à laquelle le décret a été pris. Cependant, il est clair, d'après les lois fédérales, que le gouvernement n'est lié par aucun contrat à moins de signature par le Ministre. [Voir, à ce sujet, la *Loi sur le ministère des Transports*, ch. T-18, et la *Loi sur les immeubles fédéraux*, L.C. 1991, ch. 50.] De toute façon, il était clair que le contrat relativement à l'aéroport Pearson n'était pas conclu tant que tous les documents n'avaient pas été signés et divulgués, notamment le 7 octobre. [Voir la lettre de M. Rowat au sénateur Finlay Macdonald, en date du 22 septembre 1995]

Ces deux événements m'ont fait dire qu'il était nécessaire d'obtenir des directives sur l'opportunité de faire avancer les choses, c'est-à-dire de signer le 7, mais cette fois je me suis adressée à la première ministre. C'est parce que le premier ministre est responsable de l'action du gouvernement en période d'élections. La demande ayant été présentée par le chef de l'opposition, il ne suffisait pas à mon avis de demander tout simplement des directives au ministre au moment considéré. Voilà donc quel était le contexte.

Vous comprendrez qu'il n'appartient pas à la sous-ministre des Transports de prendre le téléphone et d'appeler la première ministre pour lui dire : «Je veux que vous me donniez des directives.» L'affaire doit être soumise au greffier, dont le travail est de s'assurer que nous respectons la tradition, les principes et la procédure établie. Lorsque j'ai fait part de mon point de vue au greffier, ce dernier a estimé lui aussi qu'il était justifié de demander des directives à la première ministre. C'est ce qu'il a fait et il m'a donné des instructions.» [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:59-60]

M^{me} Bourgon a dit au Comité que la Première ministre n'avait pas à conclure l'entente.

Le sénateur Tkachuk : La première ministre n'avait aucun contrat à signer.

M^{me} Bourgon : Non.

Le sénateur Tkachuk : Qu'est-ce qu'il lui fallait faire?

M^{me} Bourgon : Il lui fallait préciser quelle était l'intention du chef du gouvernement quant au comportement que ce gouvernement devait adopter pendant cette période. C'est ce qui était...

Le sénateur Tkachuk : Si elle avait donc répondu «non», on n'aurait alors pas tenu compte de la volonté du Conseil du Trésor et de tous les ministres.

M^{me} Bourgon : Si la première ministre avait déclaré : «Mon gouvernement souhaite surseoir aux accords de ce type pendant les trois semaines à venir», nous aurions alors réuni tout le monde et mis en oeuvre toutes les options possibles pour que cette volonté se traduise dans les faits. [*Délibérations du Comité*, le jeudi 14 septembre 1995, fascicule n° 19, 19:89]

Pour mettre en oeuvre ses instructions, le 7 octobre 1993, M^{me} Bourgon a envoyé par télécopieur un message à M. Rowat, avec copie à M. Shortliffe, à M. John Tait (sous-ministre de la Justice) et à l'honorable Jean Corbeil. En voici le texte :

- 1) La première ministre, la très honorable Kim Campbell, a donné à M. Glen Shortliffe l'instruction d'assurer la signature des documents

juridiques restants concernant le transfert de T1/T2 cet après-midi, à 14 heures.

- 2) Le ministre, l'honorable Jean Corbeil, a été informé de cette décision, qu'il approuve.
- 3) Vous êtes donc autorisé à signer les documents pertinents au nom de la Couronne.
- 4) Après avoir examiné ce qui précède, M. Shortliffe a confirmé que ce message correspond aux instructions explicites de la première ministre.» [Message envoyé par télécopieur à B. Rowat par J. Bourgon, le 7 octobre 1993, doc. du Comité 00092]

On a suivi ces instructions. Ce jour-là, les documents restants ont été signés, et cela a donné lieu aux accords de l'aéroport Pearson.

Cependant, il était clair, pour les fonctionnaires, que la controverse entourant cette entente n'allait pas s'arrêter là. On a parlé au Comité d'un échange inhabituel de courrier électronique entre plusieurs fonctionnaires du Conseil du Trésor, à commencer par une note du 12 octobre 1993 de M. Andy Macdonald à M. Mel Cappe, M. Ian Clark, M. Richard Paton et M. Jean-Guy Fleury :

«La semaine dernière, à l'occasion d'une séance de réflexion des sous-ministres, Jocelyne Bourgon m'a demandé conseil sur une étude qu'elle songeait à faire [...] un examen de la décision et du processus ayant abouti à la décision concernant l'aéroport Pearson. Elle craint sérieusement que des fonctionnaires ne soient blâmés pour cette décision à un moment donné et voudrait que l'on monte un dossier sur tout le processus suivi. Je lui ai dit que cela me semblait raisonnable, mais que je communiquerais avec le SCT pour obtenir d'autres réactions des parties concernées. Que pensez-vous de cette proposition?» [Doc. du Comité, 002068]

Une demi-heure plus tard, M. Cappe lui faisait connaître son approbation :

«Andy, nous devrions préparer un dossier complet sur la question. Sid, pourriez-vous sortir les documents que nous avons à ce sujet ou, au moins, dresser une chronologie au cas où le vérificateur général ou le prochain gouvernement déciderait de faire quelque chose?» [Doc. du Comité 002068]

Il y a, sur cette page, une note manuscrite intéressante qui semble venir de M. Ian Clark :

«Cette idée me plaît. De toute façon, la chose va être connue du public.» [Doc. du Comité 002068]

M. Clark avait raison; l'affaire est effectivement devenue publique.

Signature durant la campagne électorale

Le plus scandaleux dans toute cette histoire, c'est que le gouvernement de l'époque ait décidé de passer un contrat après la dissolution du Parlement, alors qu'il luttait pour être maintenu au pouvoir lors de l'élection générale. Il était déjà évident, à ce moment, que le gouvernement conservateur s'acheminait vers une défaite. Si l'entente était valable, elle l'aurait encore été trois semaines plus tard. La crainte évidente du gouvernement de voir l'entente compromise par l'accession au pouvoir d'un autre parti soulève de sérieux doutes quant à son bien-fondé. Autrement, pourquoi sa signature n'aurait-elle pas pu être remise après l'élection?

Le Comité s'est demandé s'il n'était pas inconvenant de la part de M^{me} Campbell de conclure ce contrat controversé en pleine période électorale. Les témoins ont confirmé que cette décision faisait insulte aux usages établis au Canada; un témoin a même affirmé catégoriquement que jamais auparavant des gouvernements canadiens ne s'étaient «moqués aussi allégrement des convenances» que M^{me} Campbell. [Témoignage de M. John Wilson, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:15]

M^{me} Bourgon, maintenant greffière du Conseil privé, a reconnu que l'usage voulait habituellement que le gouvernement agisse avec prudence en période électorale. Voici ce qu'elle a dit à ce propos :

«J'estime que la règle générale de conduite qui veut que l'on agisse avec prudence au cours d'une période électorale signifie que l'on va envisager les facteurs suivants : S'agit-il d'une transaction qui va lier les gouvernements à l'avenir? Quelles sont les solutions possibles? Y a-t-il urgence? A-t-on l'obligation d'agir? Y a-t-il une controverse?» [Délibérations du Comité, le jeudi 14 septembre 1995, fascicule n° 19, 19:100]

M. John Wilson, professeur de sciences politiques à l'Université de Waterloo, a fait état de l'existence au Canada d'un usage et peut-être même d'une convention constitutionnelle qui interdisait au gouvernement Campbell de signer les accords de l'aéroport Pearson en période électorale.

En Australie, cette convention est explicite, puisqu'elle est, en fait, consignée par écrit. Connue sous le nom de «convention de transition», elle exige qu'un gouvernement «évite de mettre en oeuvre de grandes mesures de politique, d'effectuer des nominations importantes ou **de signer des contrats ou prendre des engagements importants durant la période de transition** [après la dissolution du Parlement]». [Délibérations du Comité, le lundi 25 septembre 1995, fascicule n° 24, 24:34, c'est nous qui soulignons]

Après avoir analysé le témoignage de M^{me} Bourgon au sujet de l'usage observé par le gouvernement canadien en période électorale, M. Wilson a formulé l'observation suivante : «M^{me} Bourgon a effectivement confirmé l'existence, je crois, de la convention de transition au Canada». [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:14] Il a ensuite poursuivi en ces termes :

«Il est peut-être impossible d'avoir des certitudes absolues sur les points que je vais évoquer maintenant, mais je ne connais pas d'exemples, et d'ailleurs je ne devrais pas en connaître, depuis la fin de la Première Guerre mondiale, de gouvernements canadiens qui, durant la période de gouvernement transitoire, se sont moqués aussi allégrement des convenances que ne l'a fait la première ministre Campbell lorsqu'elle a autorisé la signature définitive des accords de l'aéroport Pearson le 7 octobre 1993.

La question était très clairement très controversée. Le chef de l'opposition avait promis d'annuler l'accord si son parti remportait l'élection, ce qui aurait dû suffire, à mon avis, d'après les exemples que j'ai décrits, pour arrêter le processus. Des dépenses publiques énormes étaient en cause et l'accord liait le gouvernement du Canada par un bail à très long terme qui, lui aussi n'aurait pas dû être approuvé durant la période de transition, d'autant plus qu'il n'était pas urgent, comme nous le savons maintenant, si j'ai bien compris.

Mais fait plus important encore - et vu la façon dont je perçois le mode de fonctionnement du régime, je pense être obligé de le dire - fait plus important, je pense, la décision a clairement été prise à un moment où la première ministre et son entourage devaient savoir que leur gouvernement risquait d'être défait. Le sondage Gallup publié le 22 septembre montrait que les Libéraux avaient 37 p. 100 des intentions de vote et les Conservateurs, 30 p. 100, en baisse par rapport à 36 p. 100 en août. Le sondage Gallup publié un mois plus tard, le 21 octobre, accordait aux Conservateurs 16 p. 100 des intentions de vote.

Je n'ai pas besoin de voir les sondages internes des partis pour savoir que, vers le 7 octobre, à mi-chemin entre ces deux dates, le gouvernement était probablement à 20 p. 100, ou pas très loin de là. Peu importe les déclarations publiques, je ne crois pas un instant que la première ministre n'était pas au courant de cette situation politique catastrophique. Les faits sont donc qu'elle a choisi d'approuver la signature des accords de l'aéroport Pearson au moment où elle savait qu'elle ne pourrait pas assumer les conséquences politiques de cette décision. Et, selon moi, cela ressemble beaucoup au comportement d'un gouvernement qui a déjà perdu l'autorité morale de gouverner. **Affirmer que sa décision était un exercice du pouvoir déplacé du point de vue constitutionnel est bien peu dire, selon moi, mais dans le contexte de nos coutumes et de celles d'autres régimes parlementaires, cela suffit également pour justifier toutes les mesures qui s'imposent afin d'annuler l'accord.** [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:15-16, c'est nous qui soulignons]

Les deux autres politicologues qui ont comparu devant le Comité ont hésité à affirmer que les agissements de M^{me} Campbell allaient à l'encontre d'une convention constitutionnelle, parce que l'interprétation donnée à ce terme varie d'un spécialiste à l'autre. M. Andrew Heard de l'Université Simon Fraser a toutefois déploré que la signature ait eu lieu au milieu de la campagne électorale parce que **«ce n'est pas conforme aux usages politiques passés et c'est une question qui, à mon avis, incite certainement à se demander si c'était prudent ou non»**. [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule 24, 24:42, c'est nous qui soulignons] M. J. R. Mallory de l'Université McGill n'y est pas allé par quatre chemins lorsqu'il a qualifié la signature d'**«imprudente et bizarre»**. [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule 24, 24:43, c'est nous qui soulignons]

Bien sûr, l'électorat canadien a lui aussi condamné sans équivoque les agissements du gouvernement dans ce dossier. Les membres du Comité ont pris connaissance de lettres adressées à M^{me} Campbell par des citoyens de Mississauga, dans lesquelles ceux-ci dénoncent l'attitude «cavalière» de ses ministres à leur endroit en précisant que celle-ci a atteint le comble de l'arrogance. L'un des auteurs de ces lettres anticipe le jugement que porteront les résidents mécontents:

«comme [...] «celui de vingt-sept millions de contribuables qui voient leur gouvernement faire cadeau aux valets du Parti conservateur du seul aéroport rentable au Canada». Vous aurez bientôt une petite idée de ce jugement, lorsque vous parviendront un à un dans une boîte de scrutin les bulletins de vote de ces contribuables.» [Lettre de M. Lawrence Mitoff à M. Garth Turner, en date du 2 octobre 1993, doc. du Comité 002314]

M. Mitoff ajoute en post-scriptum la note suivante : «Veuillez considérer la présente comme ma lettre de démission du Parti conservateur. J'y ai joint ma carte de membre.».

M. Mitoff n'est pas un cas unique. Le nombre de sièges du Parti progressiste-conservateur du Canada à la Chambre des communes est passé de cent cinquante-deux à deux; et, en Ontario, province où se trouve l'aéroport Pearson, tous les candidats conservateurs ont été défaits à l'élection.

VII. EXAMEN DE M. ROBERT NIXON ET ANNULATION

Conformément à sa promesse, l'un des premiers gestes posés par M. Chrétien après son élection a été de confier à M. Robert Nixon, ex-trésorier de l'Ontario, le 28 octobre, la mission d'examiner «tous les facteurs relatifs à l'entente conclue entre la Pearson Development Corporation et Transports Canada en vue du réaménagement des aéroports 1 et 2, à l'aéroport Lester B. Pearson; et de produire un rapport d'ici le 30 novembre 1993». [Articles de l'entente, Services de consultants et de professionnels, entre Sa Majesté la Reine du chef du Canada et M. Robert Nixon, doc. du Comité 002348]

M. Nixon a engagé MM. Stephen Goudge, avocat chez Gowling, Strathy & Henderson, et Allan Crosbie, conseiller financier auprès de la banque d'investissement spécialisée Crosbie & Company, pour l'aider dans sa tâche.

M. Nixon avait tout un défi à relever, d'autant que les contraintes de temps n'allaient en rien lui faciliter la tâche - ces contraintes s'expliquaient par la volonté du gouvernement d'agir rapidement dans le dossier de l'aéroport Pearson. (À ce moment, le gouvernement ne pouvait pas prévoir, bien sûr, que la majorité conservatrice au Sénat lui mettrait des bâtons dans les roues.) Il est clair cependant, d'après les témoignages, que M. Nixon et son équipe ont consulté suffisamment de personnes pour se faire une bonne idée des enjeux et du processus en cause dans le dossier de l'aéroport Pearson, et pour pouvoir formuler des recommandations à l'intention du premier ministre⁴¹.

Il est clair que M. Nixon et ses conseillers ne pouvaient pas, en un mois, rencontrer autant de témoins que le Comité n'en a entendu en quatre mois. Ils se sont malgré tout entretenus avec des représentants de Claridge et de Paxport, des fonctionnaires de Transports Canada, des représentants de la collectivité, notamment des porte-parole de l'AAL de Toronto, pour n'en nommer que quelques-uns. Ils ont ensuite analysé les accords pour vérifier si leurs dispositions étaient ou non dans les meilleurs intérêts du Canada.

Cette analyse a été faite par M. Goudge, éminent avocat, qui a examiné les dispositions d'un point de vue de juriste, et par M. Crosbie, qui a pu évaluer les dispositions financières et les placer dans un contexte propice à l'examen de M. Nixon. En fait, le Comité a grandement profité du point de vue de MM. Goudge et Crosbie sur les accords de fond.

M. Nixon en est arrivé à la conclusion suivante :

⁴¹ M. Chern Heed, administrateur général de l'aéroport Pearson, a prévenu M. Nixon au cours de son étude du fait qu'il y avait, à Ottawa, plus de personnes qui s'occupaient de l'aéroport Pearson qu'à Pearson même». Il aurait été impossible à M. Nixon de rencontrer toutes les personnes qui étaient intervenues dans le dossier. [Témoignage de M. Robert Nixon, *Délibérations du Comité*, le mardi 26 septembre 1995, fascicule n° 25, 25:36]

«Mon examen m'a mené à une seule conclusion. Valider un contrat inadéquat comme celui-là, qui a été conclu de façon si irrégulière et, possiblement, après manipulation politique, serait inacceptable. Je vous recommande donc de l'annuler.» [«Examen du dossier de l'aéroport Pearson», en date du 29 novembre 1993, onglet «O» du Cahier d'information du Comité]

Le 3 décembre 1993, le premier ministre du Canada a rendu public le rapport Nixon en annonçant qu'il allait effectivement annuler le contrat de privatisation des aéroports 1 et 2. [Communiqué de presse en date du 3 décembre 1993, onglet «O» du Cahier d'information du Comité]

VIII. QUESTIONS

Ces faits soulèvent un certain nombre de questions :

1. Pourquoi le gouvernement a-t-il préféré faire appel au secteur privé pour les aéroports 1 et 2 de l'aéroport Pearson?
2. Y avait-il une solution de rechange pour Pearson?
3. Le processus de demande de propositions respectait-il la politique du gouvernement?
4. Y a-t-il eu ingérence politique?
5. Les lobbyistes ont-ils bénéficié d'un accès et d'une influence exagérés?
6. Indépendamment du processus suivi, l'entente finale était-elle avantageuse pour le Canada?
7. Était-il acceptable de la part du gouvernement d'ordonner la signature de cette entente controversée durant la campagne électorale?

Chacune de ces questions sera examinée ci-dessous.

IX. CONCLUSIONS

1. Pourquoi le gouvernement a-t-il préféré faire appel au secteur privé pour les aérogares 1 et 2 de l'aéroport Pearson?

Comme en fait foi le témoignage de M. Glen Shortliffe, tout indique que la décision de privatiser les aérogares 1 et 2 de l'aéroport Pearson constituait «un écart par rapport à la politique relative aux AAL». Selon M. Shortliffe et M. Doug Lewis, ex-ministre des Transports, cet écart était justifié par la nécessité de «régler ce qu'on croyait être une crise à l'aéroport Pearson». [Témoignage de M. Glen Shortliffe, *Délibérations du Comité*, le jeudi 1^{er} juillet 1995, fascicule n° 4, 4:70]

Il ne fait toutefois pas de doute qu'au moment où la demande de propositions a été rendue publique, il n'y avait pas de crise à Pearson. La récession a frappé l'industrie aérienne au Canada «comme un immense raz-de-marée». [Témoignage de M. Dominic Fiore, Air Canada, *Délibérations du Comité*, le mercredi 16 août 1995, fascicule n° 12, 12:76] Il n'y avait pas de hausse du volume de voyageurs.

Personne ne voyait l'utilité de donner suite au projet de réaménagement : Air Canada avait publiquement fait connaître son opposition, tout comme Canadien International et le reste de l'industrie aérienne. L'Association du transport aérien du Canada était intervenue maintes fois auprès du ministre des Transports afin d'obtenir que le gouvernement retarde le réaménagement jusqu'à ce que la récession ait pris fin, que le trafic voyageurs reprenne et que les lignes aériennes soient en mesure d'assumer les hausses de loyer qu'allaient entraîner les travaux de réaménagement. Ces requêtes ont à peine été entendues et n'ont certainement pas trouvé écho. L'Association a reçu une réponse à sa lettre du 29 novembre 1991 à l'intention du ministre au mois de mai suivant -- soit deux mois après la publication de la demande de propositions. [Témoignage de M. Gordon Sinclair, *Délibérations du Comité*, le jeudi 17 août 1995, fascicule n° 13, 13:78]

Même la société Claridge, qui devait finalement prendre le contrôle de T1T2 Limited Partnership, s'était opposée à la publication d'une demande de propositions en alléguant que l'industrie n'avait exprimé aucun besoin ni aucun désir en ce sens. L'entreprise avait même offert, advenant que ses prédictions concernant le niveau de fréquentation soient erronées, d'effectuer les rénovations à ses propres frais, dans un délai de quelques mois, sans que le gouvernement n'ait à déboursier un sou et de manière à ce que la capacité d'accueil soit amplement suffisante jusqu'en l'an 2000 et au-delà». Son offre n'a pas été acceptée. [Lettre de M. Peter Coughlin à M. Gilles Loiselle, en date du 13 novembre 1991, doc. du Comité 001137]

Le seul groupe à défendre le projet de réaménagement était le consortium Paxport - dont la direction relevait initialement de MM. Don Matthews, Jack Matthews

et Ray Hession : trois personnes qui, malgré leurs irréprochables liens avec les hautes sphères du gouvernement conservateur et les différentes instances de la fonction publique, affichaient un manque flagrant d'expérience en matière aéroportuaire. M. Jack Matthews a raconté au Comité qu'il se faisait régulièrement demander, au début des réunions destinées à mousser la candidature de Paxport comme soumissionnaire pour le projet, ce qu'il venait faire dans le domaine aéroportuaire. Pour toute réponse, il ne pouvait alors qu'évoquer son offre rejetée pour le projet de l'aérogare 3. [Témoignage de M. Jack Matthews, *Délibérations du Comité*, le jeudi 21 septembre 1995, fascicule n° 22, 22:130]

Pourquoi le gouvernement a-t-il décidé d'autoriser la publication de la demande de propositions en mars 1992? La réponse à cette question semble être venue de M. Don Blenkarn, député conservateur de Mississauga-Sud. Après s'être ouvertement déclaré en faveur de la vente des aéroports pour réduire la dette nationale, M. Blenkarn a en effet écrit à M. Jean Corbeil, trois jours avant la publication de la demande de propositions, pour lui faire part des réflexions suivantes : «Ceux qui critiquent notre gouvernement y voient une manoeuvre pour récompenser de quelque façon nos amis intéressés à exploiter des aéroports [...]. [Les autres députés de Mississauga] et moi-même sommes au courant des liens étroits qu'entretiennent un certain nombre des proposants du réaménagement de l'aéroport et leur entourage avec notre parti et sommes conscients du soutien précieux que ceux-ci nous ont apporté par le passé. À notre avis, ce qui compte, c'est d'être élu [...]. L'ensemble de la proposition ne fait pas le poids pour l'instant et nos détracteurs le savent parfaitement.» [Lettre de M. Don Blenkarn à M. Jean Corbeil, en date du 13 mars 1992, doc. du Comité 000996]

Le gouvernement était-il tenu de donner suite au projet? Sûrement pas; encore en novembre 1992 -- soit après l'évaluation des propositions et avant l'annonce des résultats -- la première ministre a demandé au greffier du Conseil privé d'envisager une façon de dédommager les proposants. Le montant de l'indemnisation n'aurait toutefois couvert que les frais engagés par ceux-ci pour préparer leurs propositions; il n'aurait pas tenu compte des profits escomptés pour toute la durée du bail consenti à l'entreprise à l'origine de la proposition retenue. Cette possibilité ne s'est jamais concrétisée, puisque le gouvernement n'a finalement pas renoncé au projet.

2. Y avait-il une solution de rechange pour Pearson?

Pendant tout ce temps, l'administration aéroportuaire locale de Toronto, connue sous le nom d'administration aéroportuaire régionale du Grand Toronto («GTRAA»), était prête à négocier la prise de contrôle de l'aéroport Pearson avec le gouvernement et en avait la capacité. Cette solution aurait respecté la politique du gouvernement en matière de gestion des aéroports et se serait inscrite dans la foulée des projets d'aménagement des autres grands aéroports du pays.

À chaque étape, la GTRAA s'est toutefois butée au refus du gouvernement. Tout indique que la norme applicable à la GTRAA était différente de celle imposée à chacune des administrations aéroportuaires locales (AAL) dans les cinq autres grandes villes canadiennes. Il ne fait pas de doute également que les décisions ayant donné lieu à ce traitement distinct ont été prises par le ministre des Transports lui-même.

Le titulaire en poste à l'époque, M. Doug Lewis, n'a pu fournir au Comité qu'une seule raison pour justifier sa décision de ne pas retenir l'option de l'AAL pour Pearson : la «crise» à Pearson exigeait une intervention de toute urgence et le gouvernement ne pouvait attendre que l'AAL soit prête à entrer en jeu. Toutefois, comme nous l'avons déjà mentionné, au moment où la demande de propositions a été rendue publique, il n'y avait pas de crise à Pearson. En fait, l'industrie aérienne (dont Air Canada et Canadien International) s'opposait farouchement à toute mesure visant l'aménagement de l'aéroport Pearson à ce moment.

M. Michael Farquhar, représentant de Transports Canada officiellement responsable des négociations relatives à la cession des aéroports aux différentes AAL en voie de création, a d'ailleurs confirmé que, dès juin 1992, les fonctionnaires du ministère *avaient* un interlocuteur à Toronto auquel ils pouvaient s'adresser pour discuter de cession. [*Délibérations du Comité*, le mardi 25 juillet 1995, fascicule n° 5, 5:79]

La principale raison invoquée pour justifier le refus du ministre des Transports de reconnaître la GTRAA avait trait à l'insistance de la région de Peel au sujet de l'inclusion de l'aéroport de l'île de Toronto dans l'entente de cession à la GTRAA. Il est devenu évident cependant que cette raison n'était rien de plus qu'une excuse. Lorsque le ministre des Transports en a fait état dans une lettre envoyée à la GTRAA pour lui signifier son refus de reconnaître sa légitimité, des fonctionnaires ont ajouté une note manuscrite sur la copie versée au dossier permanent pour indiquer que «nonobstant les observations susmentionnées, il semblerait que l'AAL de Toronto satisfait déjà aux exigences préalables du gouvernement pour devenir une AAL, selon les critères établis pour les quatre premières AAL». [doc. du Comité 000549]

Selon les renseignements recueillis, l'existence d'une divergence d'opinion semblable entre le gouvernement fédéral et une municipalité de la région d'Edmonton sur la question de savoir s'il était souhaitable ou non qu'un deuxième aéroport local relève de la compétence de l'AAL n'avait pourtant pas empêché la cession de l'aéroport international d'Edmonton à une AAL. Le ministre des Transports «connaissait très bien le dossier d'Edmonton». [Témoignage de M. Michael Farquhar, *Délibérations du Comité*, le jeudi 27 juillet 1995, fascicule n° 7, 7:49-50]

Pourquoi le gouvernement était-il si attentif aux préoccupations d'une municipalité de la région (sur 35), alors qu'il avait carrément fait fi d'une résolution très ferme adoptée par le conseil municipal de Toronto pour s'opposer à la

privatisation des aérogares 1 et 2 et demander «que le gouvernement du Canada revienne sur sa décision et permette ainsi une nouvelle étude du dossier». [Lettre à M^{me} Kim Campbell de la part du greffier municipal adjoint, Ville de Toronto, en date du 18 octobre 1993, doc. du Comité 002086]

Les preuves ne manquent pas pour démontrer qu'au moment où le processus de demande de propositions a été mis en branle et, à plus forte raison, au moment où les négociations ont été entamées avec les promoteurs (le 5 mai 1993), il y avait en place une AAL prête à négocier la cession de l'aéroport Pearson et capable de le faire. Les excuses données pour justifier le refus de négocier avec l'AAL de Toronto sont nettement boiteuses. La question reste donc entière : pourquoi le gouvernement a-t-il tenu à déroger à sa politique pour l'aéroport le plus rentable au pays? La seule explication possible à cet égard est celle-ci : le gouvernement entretenait d'autres ambitions pour cet aéroport.

3. Le processus de demande de propositions respectait-il la politique du gouvernement?

M. Stephen Turner, directeur, Direction de l'examen des services centraux du gouvernement, a indiqué au Comité que le processus d'acquisition du gouvernement du Canada «est fondé sur trois principes opérationnels fondamentaux : la **concurrence**, qui signifie pour nous un appel d'offres ouvert; un **traitement égal**, qui signifie que tous les fournisseurs sont traités selon les mêmes conditions et évalués selon les mêmes critères; et le dernier est la **transparence**. [Délibérations du Comité, le mercredi 1^{er} juillet 1995, fascicule 3, 3:106; c'est nous qui soulignons] M. Al Clayton, directeur exécutif, Bureau des biens immobiliers et du matériel, a confirmé que ces mêmes principes s'appliquaient aux contrats de location du genre de ceux prévus dans l'entente sur les aérogares 1 et 2. [Délibérations du Comité, le mercredi 1^{er} juillet 1995, fascicule 3, 3:107]

Les principes directeurs observés pour le projet T1T2 étaient tout autres.

Les fonctionnaires du ministère des Transports estimaient qu'il fallait d'abord exiger une déclaration d'intérêt de la part des promoteurs intéressés, comme cela s'était fait pour l'aérogare 3. [Voir, par exemple, le document intitulé «Quelles sont les différentes façons pour un promoteur de voir sa candidature retenue?», en date du 8 janvier 1991, doc. du Comité 001063] **Ils sont allés jusqu'à préparer une ébauche de demande de déclarations d'intérêt.** [Témoignage de M. Wayne Power, Délibérations du Comité, le mercredi 26 juillet 1995, fascicule n° 6, 6:13, et l'ébauche de «Demande de déclarations d'intérêt», en date du 5 juin 1991, doc. du Comité 001060]

Seul Paxport était opposée à l'idée d'ajouter l'étape de la déclaration d'intérêt; Canadian Airports Limited, l'un des deux autres soumissionnaires potentiels, préconisait quant à elle un processus en deux étapes, tandis que l'autre, soit Airport Development

Corporation (devenu ensuite Claridge), jugeait que tout le projet de réaménagement était inutile. [Doc. du Comité 001114]

Paxport a exercé beaucoup de pressions pour qu'il n'y ait pas de demande de déclarations d'intérêt. Passant outre à l'avis de ses fonctionnaires, le ministre a ordonné que le processus de demande de propositions se déroule en une seule étape, c'est-à-dire qu'il n'y ait pas de demande de déclarations d'intérêt ou d'étape de présélection. [Voir la note de L.A. McCoomb à V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047]

En plus de tenter de convaincre leurs interlocuteurs de l'inutilité de l'étape des déclarations d'intérêt puisque les trois promoteurs intéressés étaient déjà connus, les représentants de Paxport s'efforçaient par ailleurs d'obtenir l'élimination des autres soumissionnaires. Ils y sont parvenus dans un cas - la candidature de Canadian Airports Limited ne pouvait en effet être retenue, en raison de l'exigence relative au contrôle canadien contenue dans la demande de propositions. Heureusement pour Paxport, il a été impossible à ses représentants d'obtenir que Claridge soit écartée; cette société devait plus tard empêcher que Paxport ne perde carrément le projet.

Les preuves ne manquent pas pour démontrer que le gouvernement était conscient que l'imposition d'un délai de 90 jours pour donner suite à la demande de propositions était irréaliste et risquait de dissuader des proposants potentiels. Price-Waterhouse avait recommandé de fixer ce délai à six mois. [Voir, par exemple, la note de M. Chern Heed à M. V. Barbeau, en date du 29 octobre 1991, doc. du Comité 000639]

Paxport a multiplié les démarches auprès du ministre pour obtenir que le délai soit court. Encore une fois, le ministre a passé outre à l'avis de ses fonctionnaires et ordonné que le délai prévu dans la demande de propositions soit fixé à 90 jours, à compter de sa date de publication. [Note de L.A. McCoomb à V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047]

Parce que le processus se déroulait en une seule étape et que le délai fixé pour donner suite à la demande de propositions n'était que de 90 jours, il était impossible à de nouveaux groupes d'entrer dans la course sans être au départ désavantagés. M. Hession a affirmé devant le Comité permanent des transports de la Chambre des communes que Paxport avait dû «déployer énormément d'efforts pour respecter le délai de 90 jours fixé dans la demande de propositions. J'ai dû [en l'occurrence, M. Hession] réunir une équipe de 60 personnes regroupées dans un bureau de Toronto, lesquelles ont travaillé 20 heures par jour, sept jours par semaine, jusqu'à l'expiration du délai pour que notre soumission soit prête à temps». [*Procès-verbaux et témoignages du Comité permanent des transports de la Chambre des communes*, le 26 mai 1994, fascicule n° 7, 7:19]

Si Paxport elle-même, qui avait été créée dans le seul but de décrocher ce contrat particulier et qui attendait cette demande de propositions depuis 1989, a trouvé le délai de 90 jours presque trop exigeant, comment de nouveaux venus pouvaient-ils espérer réussir?

Pourquoi, dans le cas des aérogares 1 et 2, le gouvernement ne s'est-il pas inspiré du processus suivi pour l'aérogare 3 -- qui, aux dires de témoins entendus par le Comité, est maintenant devenu un exemple à suivre en matière d'appel d'offres? Des témoins ont affirmé que le projet des aérogares 1 et 2 était beaucoup plus complexe que celui de l'aérogare 3; or, le contraste est frappant. **Alors que le projet de l'aérogare 3 a d'abord donné lieu à une demande de déclarations d'intérêt, puis à une demande de propositions, le processus relatif aux aérogares 1 et 2 s'est déroulé en une seule étape, à la demande expresse du ministre. Alors que sept mois entiers se sont écoulés entre la publication de la demande de déclarations d'intérêt et l'échéance fixée pour la présentation des propositions relatives à l'aérogare 3, le délai fixé à l'égard de la préparation et de la présentation des propositions pour les aérogares 1 et 2 ne devait être que de 90 jours, selon la directive du ministre.** [Voir le témoignage de M. Wayne Power, *Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:18; et celui de M. Ed Warrick, *Délibérations du Comité*, le mercredi 1^{er} juillet 1995, fascicule n° 3, 3:27, 37]

Le Ministre s'est là aussi rallié aux arguments de Paxport et a rejeté les avis de ses fonctionnaires, qui voulaient attendre les résultats de l'évaluation environnementale du projet d'expansion des pistes.

Le 16 mai 1991, M. Chern Heed a pu déclarer : «Nous nous sommes engagés clairement envers le public à ne prendre aucune mesure pour augmenter la capacité de l'aéroport Pearson avant de connaître les résultats de l'évaluation environnementale.» [Note, en date du 16 mai 1991, doc. du Comité 001161]

Paxport a multiplié les démarches pour convaincre le Ministre qu'il était inutile d'attendre les résultats de l'évaluation environnementale. De fait, des directives explicites ont été données au nom du Ministre dans une note du 21 août 1991 : «La demande de propositions peut être lancée avant que la Commission d'évaluation environnementale ait terminé l'étude de la proposition ministérielle pour l'aménagement de nouvelles pistes à l'Aéroport international Lester B. Pearson.» [Note de L.A. McComb à V.W. Barbeau, le 21 août 1991, doc. du Comité 001047]

En apprenant que le gouvernement s'apprêtait à lancer la demande de propositions avant de recevoir le rapport d'évaluation environnementale, au moins deux membres de la Commission ont menacé de démissionner. [Note de M. Peter Coughlin à l'hon. Gilles Loiselle, en date du 13 novembre 1991, doc. du Comité 001137]

La demande de propositions a été lancée le 16 mars 1992, soit cinq mois avant la parution du rapport de la Commission d'évaluation environnementale, le 30 novembre 1992. Le rapport indique qu'il n'y avait «aucune probabilité que la demande de trafic passager aérien atteigne avant 2001 et peut-être même plus tard les niveaux projetés pour 1996 dans l'énoncé des incidences environnementales; il n'y a aucun problème grave et continu de congestion à l'aéroport Pearson à l'heure actuelle». [*Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:17]

Les critères qui ont servi à l'évaluation des propositions sont ceux-là mêmes que souhaitait Paxport. Paxport tenait (évidemment) à minimiser tout poids accordé à la santé financière des soumissionnaires et à maximiser l'importance du «rendement pour l'État» annoncé dans les propositions. [Voir, par exemple, la lettre de M. Hession à M^{me} Huguette Labelle, en date du 18 janvier 1991]

Les critères d'évaluation — approuvés par le Ministre — accordaient seulement 5 p. 100 des points à la compétence financière des soumissionnaires, tandis que, des 40 p. 100 alloués au plan d'entreprise, 50,6 p. 100 ont compté pour le rendement prévu pour l'État. [Voir le rapport d'évaluation des propositions, doc. du Comité 001765; et le témoignage de M. Ron Lane, *Délibérations du Comité*, le mercredi 26 juillet 1995, fascicule n° 6, 6:59-60]

L'évaluation était d'autant plus difficile qu'on ne possédait aucune base de comparaison avec un scénario où Transports Canada aurait procédé lui-même au réaménagement. Un document de Transports Canada note que «la proposition de Paxport offre un rendement financier intéressant pour le gouvernement. Cependant, le rapport d'évaluation ne compare pas le rendement pour l'État prédit par Paxport avec une hypothèse où le gouvernement aurait continué d'administrer l'aéroport. Un scénario de référence n'a pas été prévu dans la demande de propositions». [Voir «Considérations sur le réaménagement des aéroports I et II», le 3 novembre 1992, doc. du Comité 001445]

Le Comité a appris que c'est le Ministre lui-même qui a demandé qu'aucun scénario de référence de «construction de l'État» ne soit établi. [Note de L.A. McCoomb à V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047]

Le Comité d'évaluation montre clairement dans son rapport qu'il était conscient de la précarité du plan de Paxport, surtout comparé au plan de Claridge. Ce dernier est décrit comme «un plan d'entreprise solide, prudent et réalisable, qui reconnaît les contraintes financières actuelles avec lesquelles l'industrie du transport aérien compose dans sa stratégie de tarification (frais peu élevés à court terme, soit de 1 à 8 ans, s'élevant seulement après l'achèvement de la phase 1 en 1998)». [Rapport d'évaluation des propositions, doc. du Comité 001765, p. 90]

Par contraste, «le plan d'entreprise de Paxport est fondé sur l'hypothèse critique qu'une bonne partie des coûts d'immobilisations ainsi que les paiements à l'État peuvent être refilés aux transporteurs aériens, et qu'elle pourra renégocier avec eux des loyers qui correspondent à ses stratégies et à ses niveaux de tarification [...]. L'échec de l'un ou l'autre de ces éléments pourrait obliger Paxport à réduire l'ampleur du projet ou à retarder le réaménagement, surtout la phase 2. Il pourrait aussi amener une diminution des paiements à l'État, *et même remettre en question la viabilité financière de la proposition*». [Rapport d'évaluation des propositions, doc. du Comité 001765, p. 90]

La proposition de Paxport a néanmoins été choisie comme étant la meilleure proposition globale. Et, comme on pouvait s'y attendre, parce que Paxport avait mal mesuré les réalités financières ponctuelles de l'industrie de l'aviation et parce que ses bases financières étaient fragiles, elle n'a pas pu financer sa proposition. Quelques jours seulement après que le gouvernement eut annoncé que la proposition de Paxport avait été choisie, celle-ci négociait sa fusion avec Claridge.

Comment ne pas se demander si Paxport n'a pas agi ainsi simplement dans le but d'avoir un «morceau du gâteau» en profitant des goussets bien garnis de Claridge, au lieu de se livrer au jeu véritable de la compétition. Toute l'affaire, du commencement jusqu'à la fin, semble manigancée pour assurer la sélection de la proposition de Paxport, au mépris de la logique, de l'expérience et du gros bon sens. Pourquoi choisir une proposition qui implique ouvertement des hausses radicales des loyers exigés des transporteurs aériens, alors que les principales compagnies aériennes du Canada frôlent la faillite? Pourquoi décourager de nouveaux concurrents en fixant l'échéance à 90 jours? Et pourquoi, dans l'évaluation des mérites de chaque offre, tenir si peu compte de la capacité financière du soumissionnaire d'exécuter le contrat?

S'il n'y a aucun calcul derrière tous ces gestes pour augmenter les chances de Paxport de remporter la proposition, alors il y a une grande incurie : on a tiré à pile ou face le sort du plus important centre de transit canadien vers les marchés internationaux. De plus, il ressort clairement des preuves accumulées que les décisions étaient entre les mains du ou des ministres des Transports et du premier ministre du Canada.

4. Y a-t-il eu ingérence politique?

C'est là une des questions les plus difficiles qu'ait eu à résoudre le Comité. Sans accès aux documents du Cabinet et à ceux des ministres, ou aux entretiens entre les fonctionnaires et les ministres, comment savoir s'il y a eu ingérence politique ou non? **Cependant, les preuves recueillies montrent hors de tout doute que le Bureau du Conseil privé, qui prend ses ordres directement du premier ministre, s'est énormément intéressé à la transaction.** [Voir, par exemple, le témoignage de M. David Broadbent, *Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:109]

Le Premier ministre semble avoir porté une plus grande attention au dossier que le ministre des Transports lui-même; il était certainement mieux informé. [Comparer, par exemple, le témoignage de M. Glen Shortliffe, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:65-66, avec le témoignage de M. Jean Corbeil, *Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:24; et la note au Premier ministre de M. Shortliffe, le 4 décembre 1992, doc. du Comité 002184, avec le témoignage de M. Jean Corbeil, *Délibérations du Comité*, le mercredi 20 septembre 1995, fascicule n° 21, 21:24]

Le Premier ministre a été informé en novembre 1992 des nombreuses réserves de Transports Canada et d'autres intéressés à l'endroit du projet — notamment «l'inégalité de l'entente (plus d'un milliard de dollars de profits contre seulement 150 millions de dollars d'investissement)» et «son incidence négative sur le déficit». Cela n'a pas empêché le projet d'aller de l'avant. **Il est tout de même révélateur que la note de M. Shortliffe au Premier ministre en date du 16 novembre 1992 ne donne pas une seule bonne raison de réaliser le projet.** [Voir la note au Premier ministre de M. Shortliffe, en date du 16 novembre 1992, doc. du Comité 002188]

Le greffier du Conseil privé, M. Glen Shortliffe, tenait des réunions hebdomadaires «pour que personne ne perde le fil» [note de M. Paul Gou à M. Al Clayton, le 6 mai 1993, doc. du Comité 000417], et il en faisait un compte rendu au Premier ministre en lui donnant tout le détail des négociations.

Le Comité a pris connaissance de notes de M. Shortliffe au Premier ministre, qui indiquent que des réunions d'information avaient lieu toutes les deux semaines, parfois plus souvent. Interrogé à propos de ce niveau d'intérêt «incroyable» manifesté par le Bureau du Conseil privé, M. David Broadbent a reconnu : «Je n'arrive pas à me rappeler moi non plus une situation comparable.» [*Délibérations du Comité*, le mercredi 2 août 1995, fascicule n° 9, 9:109]

Le Comité a constaté que de «fortes pressions» avaient été exercées sur les fonctionnaires pour que les accords de l'aéroport Pearson soient signés avant le 31 mai 1993. [Voir, par exemple, la note de M^{me} Carole Swan à M. Sid Gershberg, le 10 mai 1993, doc. du Comité 00272] Des notes du ministère des Finances indiquent que «les fonctionnaires de Transports travaillent à un rythme effréné pour arriver à signer les accords définitifs avant la fin de mai». **Les fonctionnaires ont laissé entendre que cette insistance à vouloir respecter la date limite avait un prix : «La PDC doit sûrement sentir qu'elle a l'avantage dans les négociations.»** [Note de M. Robert Fonberg à M. Michael Francino, le 17 mai 1993, doc. du Comité 002072]

Les fonctionnaires étaient inquiets en raison des fortes pressions exercées : «Dans quelques semaines, le gouvernement aura pieds et poings liés par un contrat d'une durée de

57 ans. La PDC sera bientôt en mesure d'imposer des prix monopolistiques, et cela nous inquiète. Si cette transaction est conclue, il faudra certainement élaborer un plan de communication pour expliquer la hausse des prix et des loyers fonciers.» [Note de M. Robert Fonberg à M. Michael Francino, le 17 mai 1993, doc. du Comité 002072; souligné dans le document original]

Le Comité a appris que les pressions étaient exercées directement par le Premier ministre, qui était déterminé à conclure le contrat avant de céder la place à M^{me} Campbell. [Voir, par exemple, le témoignage de M. Glen Shortliffe, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:74] Cependant, même M. Mulroney a fini par reconnaître qu'il ne réussirait pas à faire passer la transaction avant la fin de son mandat. M. Shortliffe l'a informé que «les retards subis par Paxport et Claridge pour clarifier le statut de Mergeco ralentissent la transaction». [Note au Premier ministre, en date du 8 avril 1993, doc. du Comité 002097]

Le dossier a été livré à la très honorable Kim Campbell, qui n'a montré aucun scrupule non plus à intervenir pour que le contrat soit signé avant les élections d'octobre 1993. Deux semaines et demie avant les élections, alors que les sondages montraient clairement que les Conservateurs allaient être battus, elle a demandé elle-même au négociateur en chef de procéder à la signature des accords.

Le Comité a relevé d'autres preuves des pressions exercées par le cabinet du Premier ministre. Une note manuscrite rendant compte d'une réunion, le 14 juin 1991, avec M. Richard Lelay, chef de cabinet du ministre des Transports de l'époque, M. Jean Corbeil, indique : **«Dissocier la demande de l'évaluation : pression énorme, CPM inquiet»** [Doc. du Comité 000585] Cette note dit aussi : **«Le Ministère est-il capable de ficeler l'affaire pour qu'elle n'éclabousse pas tout le monde? C'est là toute la question.»**

Le Premier ministre n'a pas hésité à laisser entendre au greffier du Conseil privé, M. Glen Shortliffe, qu'il voulait que ses amis aient «une part du gâteau». [Témoignage de M. Shortliffe, *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:65] Voici la suite des événements : quelques jours seulement après l'annonce que la proposition de Paxport avait été retenue, Paxport et Claridge négociaient une fusion, qui a été décrite dans des documents internes de Transports Canada comme «un produit du Bureau du Conseil privé et des politiciens». [Notes d'une réunion le 18 mars 1993, doc. du Comité 00007]

Ces événements rappellent inévitablement les activités de M. Mulroney dans des négociations analogues en 1988, qui avaient amené la Cour de justice de l'Ontario à conclure que plusieurs événements «extraordinaires» s'étaient produits⁴² :

«Frustré par la lenteur des négociations, John Bitove père (ci-après «Bitove Sr.»), président de Bitove Corporation, fait une chose extraordinaire. Il appelle un ami politique, le premier ministre Brian Mulroney, pour demander son intervention. Peu de citoyens canadiens peuvent accéder directement au premier ministre et se faire entendre au sujet de la progression et de l'issue de négociations avec un ministère du gouvernement. Mais nous sommes en 1988, une année d'élections, et Bitove Sr. est un puissant argentier du Parti conservateur. Que le premier ministre prenne part à ce qui semble être essentiellement des négociations commerciales privées est encore plus extraordinaire. Cependant, à la suite des démarches de Bitove Sr., le Premier ministre est entré en contact avec Glen Shortliffe, sous-ministre de Transports et Communications (ci-après «Shortliffe») pour lui demander de résoudre le problème. Shortliffe a immédiatement retiré le dossier des mains de l'équipe de négociation à Transports Canada.» *Canada (procureur général) c. Bitove Corp.*, [1995] n° 2627, Dossier B31/94A, Cour de justice de l'Ontario, le 14 septembre 1995 (Lederman, J.), para. 50.

Dans l'affaire Pearson, quand Paxport s'est plaint de la lenteur des négociations, M. Victor Barbeau a été destitué de ses fonctions en tant que sous-ministre adjoint chargé des aéroports et a été envoyé chez lui «cultiver son jardin». De fait, entre le début et la fin des négociations, les membres de l'équipe du gouvernement avaient presque complètement été remplacés; durant cette période, Transports Canada a eu trois ministres, trois sous-ministres et quatre négociateurs en chef. Cela a causé un grave manque de continuité. On peut se demander si tous ces changements n'avaient pas pour but de trouver quelqu'un qui accepte de conclure cette transaction.

Dans une note interne, Paxport fait état du mécontentement d'un représentant de Transports Canada au sujet de «l'ingérence politique dans le processus. [Le représentant] déplorait que le gouvernement, ayant pris une décision au sujet de l'avenir des aéroports, ne laisse pas les fonctionnaires faire leur travail convenablement, comme pour l'aéroport 3». [Note intitulée «Coordination des travaux à l'Aéroport international Lester B. Pearson avec Transports Canada», de M. Dale Nankivell à M. Jack Matthews, le 15 avril 1993, doc. du Comité 001104]

Il a été amplement démontré que le ministre des Transports a refusé d'entendre l'avis de ses fonctionnaires à plusieurs reprises, par exemple en refusant de demander

⁴² Tout comme M. Shortliffe a tenté de minimiser l'importance des interventions de M. Mulroney dans l'affaire Pearson, il s'est aussi donné beaucoup de mal pour contester les conclusions du tribunal dans l'affaire *Bitove*. Les similitudes et la manière de se comporter sont frappantes.

des «déclarations d'intérêt», en lançant la demande de propositions sans attendre les résultats de la Commission d'évaluation environnementale sur les pistes, en imposant une échéance de 90 jours pour la réception des demandes de propositions, et en refusant de préparer le scénario de référence d'une éventuelle «construction de l'État» qui aurait servi à évaluer la vraie valeur des propositions pour l'État. [Voir, par exemple, la note de L.A. McCoomb à V.W. Barbeau, en date du 21 août 1991, doc. du Comité 001047]

Ces interventions ne se sont pas terminées avec la fin du processus d'appel de propositions. Le consortium a exigé certaines garanties tout au long des négociations finales, les autorités de Transports Canada ont recommandé vivement qu'elles soient refusées, et le Ministre a ordonné que les conditions critiquées soient acceptées, entre autres le report du paiement du loyer au gouvernement, d'une valeur de 33 millions de dollars, et la garantie touchant le déroutement du trafic voyageurs.

Les fonctionnaires ne pouvaient que prendre des notes «pour éviter d'être blâmés». [Lettre par courrier électronique de M. Andy Macdonald à M. Mel Cappe et trois autres destinataires, le 12 octobre 1993, doc. du Comité 002068] Dès le 17 juin 1991, des notes internes indiquaient : «papier - le ministre peut nous contester ... mais piste de vérification pour les décisions». [Note de réunion, le 17 juin 1991, doc. du Comité 000585]

M. Barbeau, répondant à quelqu'un qui voulait savoir si le processus de demande de propositions pour le projet des aéroports 1 et 2 était inhabituel, a dit :

«Est-ce inhabituel? Encore une fois, cela exige que je porte un jugement de valeur, et je ne peux me prononcer là-dessus. Qu'est-ce qui est normal, anormal, habituel, inhabituel? Le fait est que nous avons, en tant que fonctionnaires, une certaine marge de manoeuvre qui nous permettait d'agir d'une certaine façon, et c'est ce que nous avons fait.» [Délibérations du Comité, le mardi 11 juillet 1995, fascicule n° 2, 2:69]

5. Les lobbyistes ont-ils bénéficié d'un accès et d'une influence exagérés?

Bien qu'il soit toujours difficile de préciser ce qui est acceptable en matière de lobbying et ce qui est excessif, dans ce cas-ci le Comité a constaté l'influence extraordinaire exercée par les démarcheurs auprès du gouvernement, ainsi que les récompenses non moins extraordinaires dont le secteur privé gratifiait les lobbyistes — des coûts qui seraient recouvrés, avant profits, à même les recettes de Pearson. Voici quelques exemples :

- M. Hession a orchestré soigneusement une campagne de lobbying adressée à tous ceux qui pouvaient aider de quelque manière que ce soit Paxport à obtenir le contrat Pearson. Son emploi du temps entre 1990 et septembre 1993 [les seuls agendas produits pour le Comité] est truffé de lunches et de soupers pris au Rideau Club, au

Hy's Steak House et au Restaurant parlementaire, de parties de golf, ainsi que de douzaines de réunions avec des ministres du Cabinet, le personnel politique, des chefs de cabinet du Premier ministre, et avec des proches du premier ministre Mulroney, par exemple M. Sam Wakem (également associé de M. Gordon Baker, avocat pour le groupe Matthews), M. Guy Charbonneau et M. Fred Doucet, qui s'est plus tard fait inscrire comme lobbyiste de Paxport.

- M. Hession a engagé une équipe de lobbyistes dirigés par M. Bill Neville, pour faciliter la campagne. Pendant toute cette période, M. Neville travaillait aussi à contrat pour Air Canada, puis, alors qu'il facturait encore Paxport pour ses services de lobbying, il a dirigé l'équipe de transition de M^{me} Campbell, laquelle a déplacé d'importants fonctionnaires chargés du dossier Pearson.

- M. Hession a recruté M. Andy Pascoe dans son équipe de lobbyistes. M. Pascoe avait fait partie de l'équipe du ministre des Transports Lewis en tant que responsable du dossier du réaménagement de l'aéroport Pearson. Il voyait toutes les propositions non sollicitées relativement aux aéroports 1 et 2, où y avait accès. En tant que représentant du bureau du Ministre, il assistait aux réunions avec les concurrents de Paxport et avec les autorités de Transports Canada. Il avait donc accès à des informations confidentielles détaillées concernant les concurrents de Paxport et ce qu'ils proposeraient probablement pour l'aéroport, ainsi qu'à des renseignements confidentiels à propos des préoccupations et des priorités de Transports Canada. Qui plus est, il s'est joint à Paxport juste avant le lancement de la demande de propositions, précisément au moment où cette information était la plus utile à Paxport et ses dirigeants.

- Les lobbyistes de Paxport ont pu obtenir des comptes rendus détaillés des réunions des principaux comités du Cabinet qui avaient une incidence directe sur le projet Pearson. Bien que les procès-verbaux de ces réunions soient censés être tenus secrets au moins vingt ans, M. Hession a révélé qu'il n'était «pas inhabituel» que Paxport reçoive cette information. Notre stupéfaction et notre indignation devant cette révélation ont semblé réellement l'étonner, ce qui en dit long sur l'esprit qui régnait.

- Paxport a signé deux contrats avec M. Fred Doucet, un ami intime de longue date et membre haut placé du cabinet du premier ministre Mulroney. Ces contrats prévoyaient le versement à M. Doucet de plus de 2 millions de dollars en honoraires de lobbying, à la condition que Paxport signe les contrats Pearson.

- Paxport a signé un contrat avec M. Hession dans lequel elle s'engage à lui verser un montant après-mandat de 83 750 \$ chaque année la vie durant. S'il décédait avant sa femme, celle-ci recevrait 41 875 \$ chaque année, à vie. C'est là une pension

généreuse pour quatre années de lobbying, et elle aurait été prise directement sur les recettes de Pearson.

L'efficacité de la campagne de lobbying est évidente tout au long de ce rapport. **Paxport a obtenu par ses démarches que le gouvernement ne tienne pas compte des conseils des fonctionnaires et qu'il utilise à la place un processus en une étape (aucune déclaration d'intérêt); qu'il lance la demande de propositions assortie d'une échéance rapprochée (90 jours au lieu des six mois recommandés); qu'il lance la demande de propositions avant que le rapport d'évaluation environnementale ne soit déposé; qu'il définisse les qualités des soumissionnaires dans la demande de propositions de manière à éliminer de la course un des concurrents les plus sérieux de Paxport, qu'il accorde beaucoup d'importance au «rendement pour l'État» dans l'évaluation des propositions, et qu'il minimise le nombre de points accordés au soumissionnaire en fonction de sa capacité financière ou autre à exécuter le contrat. Puis, quand le sous-ministre a refusé d'ordonner à ses fonctionnaires de négocier avec Paxport après que la firme Deloitte & Touche eut constaté que Paxport n'avait pas les moyens de financer sa proposition, les lobbyistes ont réattaqué et ont pour ainsi dire persuadé le ministre des Transports d'orienter le résultat.**

Nous pouvons comprendre les efforts des lobbyistes pour représenter vigoureusement les intérêts de leurs clients. Toutefois, nous nous opposons fortement au fait que le gouvernement ait été prêt à modifier sa politique publique et à prendre de nouveaux règlements en réponse à ces démarches, souvent au mépris du jugement des fonctionnaires, en en fin de compte, du bon sens en affaires et des intérêts du pays. Ce processus **n'est pas** celui que le gouvernement du Canada doit adopter pour décider du sort du plus important aéroport au Canada, et pour négocier un accord qui durerait 57 ans.

6. Indépendamment du processus suivi, l'entente finale était-elle avantageuse pour le Canada?

Bien qu'il soit difficile de faire abstraction des irrégularités inhérentes au processus, nous devons évaluer l'entente finale objectivement, selon ses mérites. Les conditions de l'entente finale soulèvent des questions assez graves pour justifier que l'entente soit annulée.

Le Comité a entendu des témoignages incontestés selon lesquels le gouvernement se fondait sur des données dépassées quand il a conclu que le taux de rendement attendu pour le consortium en vertu de l'entente finale était juste et raisonnable. Par exemple, le rapport de Deloitte & Touche en date du 17 août 1993, indiquant que le rendement de 14 p. 100 après impôt était juste et raisonnable, était basé sur «les taux plus élevés au printemps» et il ne reflétait pas les taux d'intérêt en vigueur quand la lettre a été écrite. [Témoignage de M. Allan Crosbie, *Délibérations du Comité*, le lundi 6 novembre 1993, 1300-7]

Deloitte & Touche, dans leur rapport, se sont aussi fondés sur un rapport de Price Waterhouse pour conclure qu'un rendement de 12 à 14 p. 100 après impôt était raisonnable. Le rapport de Price Waterhouse, cependant, citait un taux de rendement de 11 à 13 p. 100 *avant impôt*. Et cela aurait concordé avec d'autres études, par exemple le rapport de D.S. Marcil préparé pour une autre étude de Transports Canada, qui conclut qu'un taux de rendement avant impôt de 14,5 p. 100 est raisonnable. [Voir le témoignage de M. Allan Crosbie, *Délibérations du Comité*, le lundi 6 novembre 1993, 1300-6-7]

En fait, le taux de rendement avant impôt du projet des aérogares 1 et 2 était de 23,6 p. 100, un chiffre passablement plus élevé que les taux considérés comme raisonnables dans ces études. Or, même ce chiffre élevé ne dit pas tout. Il ne tient pas compte des nombreux à-côtés qui devaient enrichir les membres du consortium.

Les contrats avec liens de dépendance avaient de quoi inquiéter pour plusieurs raisons : (1) ils totalisaient des millions de dollars de recettes de Pearson à écumer par les membres du consortium; (2) les membres du consortium étaient manifestement peu enclins à discuter de ces contrats — les fonctionnaires devaient essayer de voir où se plaçait chaque morceau du casse-tête, ce qui amené Deloitte & Touche à avouer franchement qu'il leur avait été impossible d'obtenir de l'information sur ces contrats et par conséquent qu'ils n'avaient pas pu en tenir compte dans leur calcul du taux de rendement; et (3) le gouvernement renonçait à tout droit de contrôler les sommes encaissées par les membres du consortium.

Les documents du gouvernement obtenus par le Comité indiquent que «Mergeco est bien protégée contre toute augmentation des coûts de construction; de plus, Mergeco n'a pas grand intérêt à économiser sur les coûts de construction». [Voir «Observations sur l'analyse des considérations jusqu'à maintenant», le 31 mai 1993, doc. du Comité 00212] Cette remarque est particulièrement déconcertante quand on sait que des entreprises de Matthews avaient été retenues pour effectuer les travaux de construction. Ainsi, M. Matthews et compagnie n'avaient «pas grand intérêt» à économiser ou à faire preuve de responsabilité financière quand ils entreprendraient les travaux de construction. Ils seraient payés pleinement pour le travail accompli (voire grassement) et empocheraient en plus leur part des profits de 23,6 p. 100.

Si certains des contrats avec liens de dépendance étaient peut-être justes et raisonnables, d'autres étaient franchement excessifs, inappropriés et étaient inacceptables dans n'importe quelle transaction normale.

Il y a, ainsi, ce contrat d'une page, signé le 4 octobre 1993, dans lequel T1T2 Limited Partnership promet de verser 3,5 millions de dollars à Matthews Investments 4 Inc., une entreprise qui ne figure nulle part ailleurs dans les dossiers et au sujet de laquelle nous avons trouvé très peu de choses, si ce n'est que M. Don Matthews en est le président-directeur général. Cet argent s'appelait des «honoraires d'expert-conseil»,

mais il aurait pu s'appeler n'importe quoi, un cadeau par exemple, étant donné qu'aucune obligation n'incombait à Matthews Investments 4 inc. pour le mériter. Les termes du contrat étaient très clairs : celui-ci ne pouvait être annulé ou révoqué pour aucun motif. Il pouvait cependant être cédé en totalité par Matthews Investments 4 Inc., de sorte que M. Matthews pouvait affecter les 3,5 millions de dollars à lui-même, à son fils ou à un ami particulièrement serviable. Pourtant, voilà un contrat qui devait être financé à même les recettes de Pearson, présumément dans le cadre du projet de réaménagement.

Parmi les autres contrats avec liens de dépendance, il y en avait un qui prévoyait le versement d'honoraires de 4 millions de dollars à Paxport International pour promouvoir à l'étranger la compétence et la technologie canadiennes en matière de d'aménagement des aéroports. Autrement dit, l'aéroport Pearson subventionnerait l'autopromotion de Paxport pour obtenir d'autres contrats sur les marchés mondiaux.

Il y avait aussi des contrats accordés à des parties avec liens de dépendance, qui feraient de «la consultation» en rapport avec la gestion, le fonctionnement et le réaménagement des aéroports 1 et 2, soit les mêmes services que le consortium s'engageait, croyait-on, à fournir contre des profits de 23,6 p. 100.

On pourrait continuer ainsi longtemps. (Ces contrats sont énumérés plus en détail dans la partie du rapport décrivant les preuves recueillies.) Le tout se résume à ceci : des millions de dollars de recettes de Pearson serviraient à enrichir des individus et des entreprises qui se livraient à des activités qui n'auraient pas dû être payées par l'aéroport Pearson, c'est-à-dire par le public voyageurs.

D'autres aspects de l'entente finale n'étaient pas non plus avantageux pour le Canada. Le gouvernement, ayant accepté la proposition de Paxport parce qu'elle offrait le meilleur rendement pour l'État, s'est dépêché à accepter un profit moindre et ce, deux fois plutôt qu'une. D'abord, il a accepté de différer 33 millions de dollars en loyer pour les trois premières années, même si des fonctionnaires l'ont prévenu que le gouvernement n'avait pas de «source de fonds» pour compenser ce manque à gagner. [Voir la note à M. Glen Shortliffe de M. Bill Rowat, le 25 mai 1993, doc. du Comité 002194] Puis, le gouvernement a accepté d'abaisser le loyer foncier de 15 p. 100 pour permettre au consortium de passer cette économie aux transporteurs aériens et pour leur permettre de mieux assumer les hausses de loyer prévues par la proposition.

Là encore, le problème de la hausse des loyers imposée aux transporteurs aériens était connu et prévu au moment du rapport d'évaluation, un problème qui aurait pu être évité par la proposition du concurrent Claridge. La situation se décrit donc ainsi : le gouvernement choisit une proposition en raison des loyers élevés promis à l'État; ces loyers élevés dépendent de ce qu'on augmente les coûts supportés par l'industrie du transport aérien, une

industrie qui est déjà très fragile financièrement; et le gouvernement accepte de réduire les loyers pour que cette industrie ait les moyens de faire les frais de la proposition. **Si le gouvernement tenait absolument à privatiser les aérogares 1 et 2, il aurait été bien plus avantageux pour lui-même, pour l'industrie du transport aérien et pour le public voyageurs d'accepter au départ la proposition concurrente de Claridge plutôt que celle de Paxport.**

Le gouvernement a-t-il délibérément fermé les yeux sur les conditions du marché dans l'industrie du transport aérien, et sur les répercussions que ces conditions auraient sans doute sur la proposition et sur le rendement pour l'État? Le Premier ministre avait été prévenu, dès le 4 décembre 1992, que Paxport apprendrait «en quelques semaines seulement que sa proposition n'est pas réaliste compte tenu de la situation actuelle dans l'industrie du transport aérien». [Voir la note au Premier ministre de M. Glen Shortliffe, le 4 décembre 1992, doc. du Comité 002184] Ou alors, le gouvernement avait-il d'autres intentions, une autre raison de choisir la proposition de Paxport?

Le gouvernement a aussi accepté, encore une fois en dépit des vives oppositions de ses fonctionnaires, de ne pas dérouter le trafic de Pearson, et de ne pas autoriser la construction d'aéroports dans un rayon de 75 kilomètres de Pearson, avant que le volume de trafic voyageurs à Pearson atteigne 33 millions. Le gouvernement pourrait le faire à la seule condition de dédommager les promoteurs ou de leur donner accès à la zone 4 de l'aéroport Pearson, qui avait été expressément exclue du projet.

Des notes écrites par des fonctionnaires indiquaient pourtant «qu'il était plus que probable qu'un déroutement du trafic, qui fera chuter le trafic voyageurs en deçà du seuil de 33 million, s'imposera» et que «l'État se plaçait en position de vulnérabilité financière (de l'ordre de 100 millions de dollars VAN sur 57 ans de bail)». [«Seuil de déroutement et garantie de capacité», doc. du Comité 002008]

Ainsi, le gouvernement a continué de protéger le consortium contre tout risque associé au réaménagement, tout en cimentant son monopole sur les lignes aériennes du sud de l'Ontario. Non seulement le consortium contrôlerait la totalité de l'aéroport Pearson (y compris éventuellement la zone 4), mais il avait des armes puissantes pour décourager toute concurrence d'autres aéroports dans la région.

Les ententes donnaient aussi aux promoteurs une grande latitude pour ce qui était des «violations mineures». Le seul recours pour l'État en cas de violation était d'écarter le promoteur et de prendre en main l'administration de l'aéroport. Ce n'est pas ainsi que l'on procède; les contrats importants comme ceux-ci prévoient habituellement toute une série de correctifs à appliquer selon les besoins. De plus, il était peu probable que le gouvernement, qui s'était extirpé de l'administration des aéroports, puisse prendre les choses en main et

remettre l'aéroport sur la bonne voie. Cela étant, le consortium aurait eu beau jeu de changer certaines dispositions ou de ne pas honorer toutes ses obligations.

Dans l'éventualité où le consortium manquerait à ses engagements hypothécaires et où le prêteur ferait valoir sa caution en saisissant l'aéroport, le gouvernement aurait eu peu de recours à sa disposition. Il n'avait aucun des droits habituels, par exemple celui d'approuver le cessionnaire du bail. Ainsi, la banque ou tout autre détenteur des titres pourrait assigner n'importe qui aux commandes — une entreprise dont on ne connaît pas la feuille de route, ou une entreprise à capitaux étrangers — et le gouvernement n'y pourrait rien. Et le bail durerait 57 ans.

7. Était-il acceptable de la part du gouvernement d'ordonner la signature de cette entente controversée durant la campagne électorale?

Les preuves sont formelles : jusqu'au 7 octobre 1993, jour où les documents définitifs ont été signés, il n'y avait aucun contrat entre les parties. Même que les négociations se sont poursuivies jusqu'à vingt-quatre heures avant que le ministre des Transports signe certains documents le 4 octobre 1993 — seulement trois semaines avant la journée des élections.

Le Comité a appris que la règle générale de conduite suivie après la dissolution du Parlement est d'agir avec prudence. Cela signifie «que l'on va envisager les facteurs suivants : S'agit-il d'une transaction qui va lier les gouvernements à l'avenir? Quelles sont les solutions possibles? Y a-t-il urgence? A-t-on l'obligation d'agir? Y a-t-il une controverse?» [Témoignage de Jocelyne Bourgon, *Délibérations du Comité*, le jeudi 14 septembre 1994, fascicule n° 19, 19:100]

En vertu de notre Constitution, l'exécutif du gouvernement est comptable au Parlement. Toutefois, après la dissolution de la Chambre et avant l'élection d'une autre Chambre, il n'y a pas de Parlement à qui répondre de ses actes. Comme on l'a dit au Comité, cette situation amène les gouvernements à être prudents durant une période d'élections.

L'entente de l'aéroport Pearson méritait-elle d'être traitée avec prudence? Une entente considérable, sans précédent, engageant le gouvernement pendant 57 ans, hautement controversée?

En réponse à l'argument voulant qu'elle puisse toujours être annulée, rappelons que, quand le gouvernement Chrétien l'a effectivement annulée, des poursuites de centaines de millions de dollars ont été intentées, des poursuites qui sont maintenant devant les tribunaux, tandis que le projet de loi C-22, qui limiterait tout recouvrement de coûts à ceux qui ont été réellement encourus, est bloqué par les Conservateurs au Sénat.

La signature du contrat n'aurait-elle pas pu attendre après les élections? Du point de vue de l'intérêt du public, il n'y avait aucune urgence, et octobre n'était pas plus avantageux que novembre. La logique voudrait que le gouvernement progressiste conservateur, par respect pour la pratique constitutionnelle, ait attendu au mois de novembre avant de signer le contrat s'il s'attendait à gagner les élections. Il serait logique de déduire que c'est justement parce que le gouvernement s'attendait à ce que les Conservateurs perdent qu'il a violé la pratique constitutionnelle et méprisé ainsi les principes d'un gouvernement responsable.

Au sujet de la violation de cet usage, le professeur John Wilson n'y est pas allé par quatre chemins pour dire ce qu'il pensait de la signature des accords de l'aéroport Pearson. [*Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:45] Il considère que le premier ministre Campbell «s'est moquée allégrement des convenances» et a ajouté : «Affirmer que sa décision était un exercice du pouvoir déplacé du point de vue constitutionnel est bien peu dire, selon moi, mais dans le contexte de nos coutumes et de celles d'autres régimes parlementaires, cela suffit également pour justifier toutes les mesures qui s'imposent afin d'annuler l'accord». [*Id.*, 24:15-16]

Le Comité a appris qu'il existe en Australie une convention constitutionnelle écrite appelée «convention de transition», qui «exige qu'un gouvernement évite de mettre en oeuvre de grandes mesures de politique, d'effectuer des nominations importantes ou de signer des contrats ou prendre des engagements importants durant la période de transition et d'éviter de faire participer des fonctionnaires ministériels à des activités électorales». [Mémoire du professeur John Wilson, dont il a été fait lecture durant les *Délibérations du Comité*, le lundi 25 septembre 1995, fascicule n° 24, 24:34]

Le Comité a entendu des témoignages convaincants qui montrent que le gouvernement canadien a toujours, dans la pratique, observé ces principes. Nous pensons que le gouvernement du Canada devrait envisager sérieusement d'adopter cette convention australienne pour guider et circonscrire les actions qu'un gouvernement peut prendre durant une période d'élections.

Conclusion

Tout au long des audiences, le Comité, qui était constitué en majorité de Conservateurs, s'est visiblement concentré sur le rapport Nixon, quasiment à l'exclusion de toute autre chose. Le Comité a tenté de démontrer que le rapport Nixon n'était pas aussi exact ou complet qu'il aurait pu l'être. Ce faisant, il espérait pouvoir conclure que les accords de l'aéroport Pearson n'auraient pas dû être annulés.

La stratégie de la majorité conservatrice au Comité a fait long feu. C'est plutôt l'inverse qui s'est produit, comme l'a montré l'étude du Comité.

Tout ce que le Comité a vu et entendu, et qui est consigné dans le présent rapport, prouve que cette transaction était mauvaise pour le Canada, qu'elle a été élaborée selon un processus douteux du début à la fin. Avec ou sans le rapport Nixon, le Premier ministre avait toutes les raisons d'annuler les accords de l'aéroport Pearson, qui n'étaient pas avantageux ni pour les contribuables canadiens, ni pour les clients des transporteurs aériens.

Les conditions des accords étaient intolérables. Il est impossible de justifier un contrat offrant non seulement aux promoteurs un rendement exorbitant, mais aussi des millions de dollars supplémentaires en contrats parallèles entre amis, alors que le gouvernement acceptait de réduire ses propres recettes, pas une seule fois mais deux, alors même qu'il sabrait dans ses dépenses et demandait à tous les Canadiens de se serrer la ceinture!

La population savait que cette transaction était mauvaise. Les électeurs, particulièrement ceux de l'Ontario, l'ont d'ailleurs exprimé avec éloquence par la voix des urnes. L'enquête n'a fait que confirmer ce que l'électorat savait déjà : il fallait absolument annuler la transaction, pour pouvoir répondre efficacement aux besoins de l'aéroport Pearson, et ce d'une manière irréprochable et conforme à l'intérêt public.

Le pouvoir de convoquer des personnes et d'exiger la production de documents et dossiers : théorie, pratique et problèmes

Rapport du président et du vice-président¹

Le 4 mai 1995, le Comité spécial du Sénat sur les accords de l'aéroport Pearson a été créé. Il était chargé d'examiner toutes les questions concernant les politiques et les négociations qui ont conduit à la conclusion des accords sur le réaménagement et l'exploitation des aérogares 1 et 2 à l'aéroport international Pearson, et les circonstances qui ont entouré l'annulation de ces accords. Le Comité devait aussi faire rapport sur ces questions.

Parmi les pouvoirs conférés au Comité Pearson par le Sénat, citons le pouvoir de «faire comparaître des personnes et produire des documents»². Ce pouvoir revêt une importance cruciale pour la réalisation de la mission du Comité qui est chargé de mener une enquête minutieuse sur les accords de l'aéroport Pearson. S'il n'a pas accès à tous les renseignements utiles, le Comité ne peut tout simplement pas s'acquitter du mandat qui lui a été donné.

Dans la première partie du présent document, nous étudions la nature et la portée des pouvoirs des comités parlementaires et la manière dont ces pouvoirs ont été exercés de façon traditionnelle. La deuxième partie offre une vue d'ensemble du processus qui a permis la communication des documents au Comité Pearson. Les catégories de renseignements qui n'ont pas été communiqués au Comité et les motifs donnés par les fonctionnaires gouvernementaux pour se justifier font aussi l'objet d'un examen. La dernière partie du document porte sur les frustrations et les difficultés que le Comité Pearson a rencontrées dans ses efforts pour obtenir la communication complète de toute l'information utile, et elle se termine par une liste de recommandations.

Le présent document vise à partager avec les membres des futurs comités parlementaires les expériences du Comité Pearson et à mieux faire comprendre et respecter les pouvoirs des comités parlementaires.

1 Les conclusions et les recommandations de ce Rapport ne reflètent pas nécessairement les opinions de tous les membres du Comité Spécial.

2 Procès-verbaux du Sénat, 4 mai 1995, p. 929.

Première partie : la théorie

Le droit du Sénat et de la Chambre des communes d'instituer des enquêtes est un aspect fondamental du processus des comités parlementaires. Ce droit s'inscrit dans la *lex parliamenti*, soit la loi du Parlement. Comme le fait remarquer Diane Davidson, conseillère juridique générale à la Chambre des communes, les comités parlementaires sont habilités, soit par la Chambre des communes ou par le Sénat «à mener des études et des enquêtes sur des questions qui leur sont renvoyées par les deux Chambres dans les cas où il serait manifestement peu pratique pour l'entité principale d'agir elle-même»³. Les comités parlementaires constituent donc un prolongement de la Chambre des communes ou du Sénat, et ils jouissent des mêmes privilèges, immunités et pouvoirs étendus que ceux qui sont donnés aux deux chambres et à leurs membres⁴ en vertu de la Constitution⁵ et de la *Loi sur le Parlement du Canada*⁶.

3 Exposé de l'avocate générale devant le Comité mixte permanent d'examen de la réglementation sur les pouvoirs des comités parlementaires, Ottawa, Chambre des communes, 16 novembre 1994, à la p. 1; reproduit sous le titre «Les pouvoirs des comités parlementaires», *Revue parlementaire canadienne*, printemps 1995.

4 Les comités spéciaux du Sénat, comme le Comité Pearson, ne jouissent pas automatiquement de pouvoirs aussi vastes que les comités permanents du Sénat. Conformément à la Règle 94 des *Règles du Sénat du Canada*, juillet 1993, le Sénat, lorsqu'il nomme un comité spécial, précise les pouvoirs dont il est investi ainsi que les obligations qui lui incombent. Pour une liste des pouvoirs conférés au Comité Pearson, voir les *Procès-verbaux du Sénat*, 4 mai 1995, aux p. 929 et 930.

5 L'article 18 de la *Loi constitutionnelle de 1867* porte que :

Les privilèges, immunités et pouvoirs que posséderont et exerceront le Sénat et la Chambre des Communes et les membres de ces corps respectifs, seront ceux prescrits de temps à autre par la loi du Parlement du Canada; mais de manière à ce qu'aucune loi du Parlement du Canada définissant tels privilèges, immunités et pouvoirs ne donnera aucuns privilèges, immunités ou pouvoirs excédant ceux qui, lors de la passation de la présente loi, sont possédés et exercés par la Chambre des Communes du Parlement du Royaume-Uni de la Grande-Bretagne et d'Irlande et par les membres de cette Chambre.

6 L'article 4 de la *Loi sur le Parlement du Canada*, L.R.C. [1985], chapitre P-1, prévoit :

Les privilèges, immunités et pouvoirs du Sénat et de la Chambre des communes, ainsi que de leurs membres, sont les suivants :

- a) d'une part, ceux que possédaient, à l'adoption de la *Loi constitutionnelle de 1867*, la Chambre des communes du Parlement du Royaume-Uni ainsi que ses membres, dans la mesure de leur compatibilité avec cette loi;
- b) d'autre part, ceux que définissent les lois du Parlement du Canada, sous réserve qu'ils n'excèdent pas ceux que possédaient, à l'adoption de ces lois, la Chambre des communes du Parlement du Royaume-Uni et ses membres.

Les pouvoirs des comités permanents sont énoncés à l'article 91 du *Règlement du Sénat*⁷ et au paragraphe 108(1) du *Règlement de la Chambre des communes*⁸. M^{me} Davidson commente ainsi l'importance de ces deux dispositions qui :

... comprennent le pouvoir plutôt flou de «convoquer des personnes et d'exiger la production de documents et dossiers». Aucune distinction n'est faite entre les différents types de documents ou les diverses catégories de témoins. La simplicité même des termes utilisés pour accorder ce pouvoir semble donner une fausse idée de l'étendue du pouvoir ainsi délégué. Lorsqu'on ajoute à ces pouvoirs les droits des comités à titre de partie constituante du Parlement, il ne fait plus de doute que ces pouvoirs sont en effet très étendus.

Ainsi, ces pouvoirs signifient bien sûr qu'en autant que l'enquête instituée par le comité touche un domaine qui relève de la compétence législative du Parlement et du mandat du comité, celui-ci dispose de pouvoirs *pratiquement illimités pour ce qui est d'exiger la comparution de témoins et d'ordonner la production de documents*⁹. (C'est nous qui soulignons)

Cette position est appuyée par une décision rendue par le Président de la Chambre des communes en mars 1987 :

Je crois qu'il importe, au cas où il y aurait des malentendus au sujet des pouvoirs et fonctions des comités parlementaires, d'insister sur le fait que les comités constitués par la Chambre ont le droit d'exercer la totalité des pouvoirs que la Chambre leur

7 La Règle 91 est ainsi conçue :

Un comité permanent est autorisé à faire enquête et rapport sur toutes questions qui peuvent, de temps à autre, lui être soumises par le Sénat, et il est autorisé à faire quérir, au besoin, des personnes, documents et dossiers, et à faire imprimer au jour le jour les documents et témoignages dont il ordonnerait l'impression.

8 L'alinéa 108.(1)a) du Règlement prévoit :

Les comités permanents sont autorisés individuellement à faire étude et enquête sur toutes les questions qui leur sont déferées par la Chambre, à faire rapport à ce sujet à l'occasion et à joindre en appendice à leurs rapports, à la suite de la signature de leur président, un bref énoncé des opinions ou recommandations dissidentes ou complémentaires présentées, le cas échéant, par certains de leurs membres. Sauf lorsque la Chambre en ordonne autrement, ils sont aussi autorisés à convoquer des personnes et à exiger la production de documents et dossiers, à se réunir pendant que la Chambre siège et pendant les périodes d'ajournement, à siéger conjointement avec d'autres comités permanents, à faire imprimer au jour le jour les documents et témoignages dont ils peuvent ordonner l'impression, et à déléguer à des sous-comités la totalité ou une partie de leurs pouvoirs, sauf celui de faire rapport directement à la Chambre.

9 *Supra*, note 2, p. 2.

délègue. ... Les pouvoirs d'enquête des comités permanents ont été accrus récemment, dans l'esprit de la réforme parlementaire. ... La portée des opérations des comités permanents a donc été élargie considérablement et le pouvoir de convoquer des fonctionnaires comme témoins est essentiel à l'exécution efficace du mandat des comités. On peut s'attendre à ce que *l'usage du pouvoir en question augmente au lieu de diminuer à l'avenir*, et je crois qu'il est salutaire de prévenir tous les intéressés de cette réalité de la vie parlementaire¹⁰. (C'est nous qui soulignons.)

Le témoin qui comparaît devant un comité parlementaire est tenu de répondre à toutes les questions qui lui sont posées, et il ne peut se soustraire à cette obligation en invoquant des motifs comme le secret professionnel de l'avocat, le serment de discrétion ou le risque d'auto-incrimination. Le témoin peut cependant en appeler au président et exposer les raisons pour lesquelles l'information demandée ne devrait pas être communiquée¹¹. Dans ces cas-là, les comités s'efforceront souvent d'en arriver à un compromis grâce auquel l'information sera obtenue de manière à respecter quand même les préoccupations du témoin. Comme exemple de compromis, citons le fait d'examiner les renseignements demandés à huis clos. En définitive, toutefois, «les témoins doivent faire confiance au bon sens collectif des membres du Comité et à leurs bonnes grâces»¹².

Si un comité se voit opposer un refus à sa demande de documents et qu'après avoir examiné les motifs donnés pour ce refus, il insiste toujours pour les obtenir, il peut en référer au Sénat ou à la Chambre. La décision finale quant à savoir si l'ordonnance de production doit être exécutée, et comment, est laissée au Sénat ou à la Chambre même¹³.

10 Débats de la Chambre des communes, 17 mars 1987, à la p. 4265. Joint en annexe à l'exposé de M^{me} Davidson au Comité mixte permanent d'examen de la réglementation, le 16 novembre 1994, *supra*, note 2.

11 Charles Gordon (dir.), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 20^e éd., Londres, Butterworths, 1991, p. 746 et 747.

12 Joseph Maingot, *Le privilège parlementaire au Canada*, Cowansville, Éditions Yvon Blais, 1987, p. 196.

13 Arthur Beauséne, *Jurisprudence parlementaire de Beauséne*, Toronto, Carswell, 1991. La citation 848 est ainsi libellée :

1) Les comités peuvent faire quérir tous les documents pertinents à leur mandat. À cette restriction près, il semble que le pouvoir du comité d'obtenir des documents est illimité.

2) La procédure d'obtention des documents consiste pour le comité à adopter une motion qui ordonne à la personne physique ou à l'organisme de les produire. Si cette ordonnance n'est pas respectée, le comité peut renvoyer la question à la Chambre, en faisant état des difficultés qu'il y a pour obtenir les documents requis. C'est alors à la Chambre de décider des mesures à prendre.

3) Il ne peut toutefois pas être déclaré que cette exigence est absolue soit dans le cas des ministères gouvernementaux, soit dans celui des organes publics ou privés, vu qu'il n'y a pas d'exemples connus dans lesquels il a été insisté sur le respect d'une ordonnance de production des documents.

On ne sait pas très bien jusqu'à quel point la *Charte* peut limiter les privilèges, les immunités et les pouvoirs des deux

Bien qu'en théorie les pouvoirs des comités parlementaires soient clairs, comme le montre le reste du présent document, les tentatives faites pour obtenir la communication d'information par le gouvernement peuvent se transformer en une lutte féroce. Comme l'a fait remarquer Joseph Maingot récemment :

Le pouvoir dont sont incontestablement investis les comités de convoquer des personnes et d'exiger la production de documents et des dossiers a toujours donné lieu à des subtilités dans le cas de personnes ou d'institutions qui relèvent d'un ministre, du moins au Canada. Il y a toujours eu là une zone grise sinon en théorie, du moins en pratique, mais on n'a jamais vraiment jusqu'ici tenté d'élucider la question¹⁴.

Deuxième partie : le processus

Le Sénat a chargé le Comité d'une tâche très exigeante et lourde. Il fallait que le Comité étudie les événements qui se sont produits au cours d'une période de quelque six ans, notamment de nombreuses discussions et délibérations sur des questions d'intérêt public par plusieurs services ministériels, ainsi que la série complexe et détaillée de négociations entre le gouvernement et le secteur privé en ce qui concerne un des éléments d'actif les plus précieux du Canada.

Sans hésiter, le Comité s'est fixé un calendrier exigeant pour la tenue de l'enquête. Le Comité a été créé le 4 mai 1995. Au début du mois de juin, il a décidé de commencer ses audiences au début

chambres du Parlement. Dans l'affaire *New Brunswick Broadcasting Co. c. Nouvelle-Écosse (Président de l'Assemblée législative)*, 1 R.C.S. 319, il s'agissait de savoir si l'interdiction des caméras de télévision à l'Assemblée législative de la Nouvelle-Écosse contrevenait à l'alinéa 2b) (liberté de la presse) de la *Charte*. La Cour suprême a statué que la *Charte* ne s'appliquait pas à l'exercice de leurs privilèges par les membres d'une assemblée législative. Madame la juge McLachlin a fait remarquer ce qui suit :

En résumé, il semble évident que, du point de vue historique, les organismes législatifs canadiens possèdent les privilèges inhérents qui peuvent être nécessaires à leur bon fonctionnement. Ces privilèges font partie de notre droit fondamental et sont donc constitutionnels. Les tribunaux peuvent déterminer si le privilège revendiqué est nécessaire pour que la législature soit capable de fonctionner, mais ne sont pas habilités à examiner si une décision particulière prise conformément au privilège est bonne ou mauvaise (p. 384).

Dans cette affaire, la Cour a jugé que le droit de l'Assemblée d'exclure les étrangers était nécessaire au bon fonctionnement de celle-ci. Cependant, certains pouvoirs parlementaires comme le pouvoir d'un comité parlementaire de citer des témoins à comparaître et celui des chambres du Parlement de prendre des mesures pour contraindre les témoins à comparaître, peuvent ne pas satisfaire au critère de la «nécessité» et donc être contestés aux termes de la *Charte*.

14 Exposé du Comité permanent de la Chambre des communes sur les privilèges et les élections devant la Chambre des communes, appendice 3 du premier rapport du Comité à la Chambre, 27 mai 1991.

de juillet. On estime qu'il existe quelque 200 000 pages sur les accords de l'aéroport Pearson dans les dossiers du gouvernement.

Collecte et organisation des documents

Le ministère de la Justice a été chargé de mettre les documents gouvernementaux à la disposition du Comité. Pour l'aider dans cette entreprise de taille, le Ministère a retenu les services du cabinet d'avocats Scott & Aylen. Le rôle de Scott & Aylen était double. Tout d'abord, les documents utiles devaient être rassemblés à un endroit et organisés selon l'ordre de comparution des témoins devant le Comité. Scott & Aylen a retenu les services d'un cabinet de juricomptables, Lindquist Avey, pour l'aider dans cette tâche. En second lieu, le cabinet Scott & Aylen a examiné les documents avec les témoins du gouvernement et les autres, pour les préparer à se présenter devant le Comité.

Voici les grandes lignes du processus suivi pour mettre les documents à la disposition du Comité :

- tous les ministères gouvernementaux compétents ont été priés d'identifier les documents susceptibles de revêtir un quelconque intérêt pour le Comité;
- des copies de tous les documents ont été faites et remises à Lindquist Avey le 13 juin 1993;
- Lindquist Avey a créé une base de données de sorte que les documents puissent être rappelés par sujet et par témoins;
- au fur et à mesure que les témoins étaient identifiés et que leur ordre de comparution devant le Comité était connu, le personnel de Lindquist Avey rassemblait les documents dont le témoin était l'auteur ou que le témoin avait reçus, ou les documents qui étaient utiles par ailleurs;
- une équipe de fonctionnaires du ministère de la Justice et du Bureau du Conseil privé a revu les documents; les textes concernant des documents confidentiels du Cabinet, des renseignements personnels ou commerciaux confidentiels, les avis donnés aux ministres et les documents protégés par le secret professionnel de l'avocat ont été retirés, et les textes expurgés ont alors été renvoyés à Lindquist Avey;
- les textes expurgés ont été placés dans des relieurs à feuilles mobiles; un index a été préparé pour chaque relieur, et les documents ont été envoyés au greffier du Comité qui les a mis à la disposition des membres du Comité.

Au total, 103 volumes de documents ont été remis au Comité, chaque volume contenant approximativement 350 pages.

Le processus de contrôle

Pour déterminer quelle information ne serait pas communiquée au Comité, les fonctionnaires du ministère de la Justice et du Bureau du Conseil privé ont suivi les principes énoncés dans la *Loi sur l'accès à l'information*¹⁵. Bien que cette loi ne soit pas applicable aux comités parlementaires qui demandent de l'information, George Thomson, sous-ministre du ministère de la Justice, a déclaré devant le Comité que les principes suivis traditionnellement par le gouvernement pour décider quelle information mettre à la disposition des comités parlementaires étaient les mêmes que ceux qu'énonçait la *Loi*¹⁶.

Chaque fois qu'un passage était retranché, un article de la *Loi sur l'accès à l'information* était cité pour indiquer le type d'information protégé. Voici une liste d'articles de la *Loi sur l'accès à l'information* qui sont communément cités par les censeurs de l'État :

Article 19	Renseignements personnels
Article 20	Renseignements commerciaux confidentiels de tiers
Article 21	Avis élaborés pour un ministre
Article 23	Secret professionnel des avocats
Article 69	Documents confidentiels du Cabinet

Il convient maintenant d'aborder chaque catégorie de renseignements confidentiels en commençant par les domaines jugés les plus délicats :

1. Documents confidentiels du Cabinet

L'importance de la confidentialité du Cabinet est bien établie dans les systèmes parlementaires britanniques et canadiens. Les documents habituellement considérés comme des

15 L.R.C. [1985], chapitre A-1.

16 *Délibérations du Comité spécial du Sénat sur les accords de l'aéroport Pearson*, 21 septembre 1995, p. 22:85 :

M. Nelligan : ... Considérez-vous que notre comité est limité aux documents qui seraient remis à un citoyen ordinaire, en vertu de la *Loi sur l'accès à l'information*?

M. Thomson : Non, il me semble que... ils ne sont pas limités aux documents fournis en vertu de la *Loi sur l'accès à l'information*. Cependant, les principes qui y sont énoncés sont conformes à la pratique suivie et dont j'ai parlé précédemment.

documents confidentiels du Cabinet sont énumérés à l'article 69 de la *Loi sur l'accès à l'information*¹⁷.

M^{me} Margaret Bloodworth, greffière adjointe et conseillère juridique du Bureau du Conseil privé, a expliqué au Comité pourquoi il fallait protéger les documents confidentiels du Cabinet :

Le Cabinet est le groupe au sein duquel les ministres s'entendent sur les mesures que chacun d'eux est susceptible de prendre. Dans le cadre de discussions, ils sont libres de faire part de leurs opinions individuelles à leurs collègues du Cabinet, de débattre vigoureusement des problèmes et d'en venir à un consensus sur la façon de procéder, ce qui permet de tenir compte de la gamme complète des opinions avant de prendre une décision. En outre, les ministres peuvent ainsi appuyer collectivement toutes les décisions qui sont prises et en être comptables au Parlement.

Le pouvoir décisionnel collectif des ministres au sein du Cabinet est le processus clé qui permet d'assurer la solidarité entre les ministres tout en conservant la confiance du Parlement, auquel ils sont collectivement redevables. Cependant, si l'on veut que les ministres soient capables de prendre des décisions collectives, le caractère privé de leurs opinions eu égard à l'adoption d'une politique gouvernementale doit être préservé. Si ces opinions étaient divulguées avant ou après la prise de décisions, il serait difficile de préserver la solidarité et le consensus au sein du Cabinet, deux éléments qui sont essentiels à un gouvernement par l'exécutif¹⁸.

17 Le paragraphe 69(1) prévoit :

La présente loi ne s'applique pas aux documents confidentiels du Conseil privé de la Reine pour le Canada, notamment aux :

- a) notes destinées à soumettre des propositions ou recommandations au Conseil;
- b) documents de travail destinés à présenter des problèmes, des analyses ou des options politiques à l'examen du Conseil;
- c) ordres du jour du Conseil ou procès-verbaux de ses délibérations ou décisions;
- d) documents employés en vue ou faisant état de communications ou de discussions entre ministres sur des questions liées à la prise des décisions du gouvernement ou à la formulation de sa politique;
- e) documents d'information à l'usage des ministres sur des questions portées ou qu'il est prévu de porter devant le Conseil, ou sur des questions qui font l'objet des communications ou discussions visées à l'alinéa d);
- f) avant-projets de loi;
- g) documents contenant des renseignements relatifs à la teneur des documents visés aux alinéas a) à f).

18 *Supra*, note 15, p. 22:7.

2. Avis élaborés pour un ministre

Les avis élaborés pour un ministre à propos de questions étudiées par le Cabinet relèvent de la catégorie des documents confidentiels du Cabinet. Toutefois, les fonctionnaires peuvent aussi donner des avis à un ministre sur une question que le ministre peut régler individuellement sans en saisir le Cabinet. L'article 21 de la *Loi sur l'accès à l'information* définit les paramètres de cette catégorie¹⁹.

D'après le témoignage de M^{me} Bloodworth, ce type de renseignements est gardé secret «afin de s'assurer que les fonctionnaires donnent des conseils complets et honnêtes et que les ministres demeurent toujours responsables de leurs décisions, et non pas les fonctionnaires»²⁰.

3. Secret professionnel des avocats

Les conseils que reçoit un ministère gouvernemental de ses conseillers juridiques sont protégés par le secret professionnel des avocats, et le gouvernement ne les divulguera pas à moins que le client (le ministère gouvernemental) ne renonce à ce privilège. La raison d'être de ce privilège a été brièvement exposée par M. Thomson :

Souvent, lorsqu'on donne un conseil juridique, des décisions très difficiles et complexes doivent être prises qui impliquent des jugements concernant des

19 21(1) Le responsable d'une institution fédérale peut refuser la communication de documents datés de moins de vingt ans lors de la demande et contenant :

- a) des avis ou recommandation élaborés par ou pour une institution fédérale ou un ministre;
- b) des comptes rendus de consultations ou délibérations où sont concernés des cadres ou employés d'une institution fédérale, un ministre ou son personnel;
- c) des projets préparés ou des renseignements portant sur des positions envisagées dans le cadre de négociations menées ou à mener par le gouvernement du Canada ou en son nom, ainsi que des renseignements portant sur les considérations qui y sont liées;
- d) des projets relatifs à la gestion du personnel ou à l'administration d'une institution fédérale et qui n'ont pas encore été mis en oeuvre.

20 *Supra*, note 15, p. 22:8. M^{me} Bloodworth a fait le commentaire suivant :

L'article 21 de la *Loi sur l'accès à l'information* fait également référence aux conseils et prévoit un pouvoir discrétionnaire permettant de préserver non seulement les conseils donnés directement à un ministre, mais aussi ceux qui sont dispensés en général au sein d'une institution gouvernementale. Il s'agit cependant d'un pouvoir discrétionnaire. Ce n'est pas une exemption obligatoire, les responsables doivent faire preuve de discrétion.

Dans le cas qui nous intéresse, compte tenu de la tâche de votre comité et dans le but de vous donner le plus d'information possible, le principe qui a été adopté, cependant, consistait à faire en sorte que seuls les conseils donnés aux ministres seraient protégés, et non pas les conseils fournis à tous les services des ministères intéressés.

compromis et des options possibles. Divulguer des avis juridiques dans de telles circonstances pourrait gêner les discussions exhaustives et honnêtes entre un client, ou entre un client-ministère dans ce cas-ci, et son avocat. En outre, la divulgation de tels renseignements pourrait avoir des conséquences graves sur les litiges actuels ou futurs devant les tribunaux²¹.

4. Renseignements commerciaux confidentiels

Les principales sociétés du secteur privé qui ont participé à la transaction Pearson ont consenti à la communication de l'information commerciale confidentielle sur les négociations et la conclusion des accords de l'aéroport Pearson. Lorsque la société refusait de donner son consentement, l'information n'était pas fournie²².

5. Renseignements personnels

Il n'est pas nécessaire de revenir sur les raisons qui justifient la protection des renseignements personnels. Ils sont définis à l'article 3 de la *Loi sur la protection des renseignements personnels*, L.R.C. [1985], ch. P-21.

Troisième partie : les difficultés

1. Renseignements non disponibles à l'origine en temps opportun

Au début des audiences, les membres du Comité ont été frustrés parce qu'ils n'avaient pas eu beaucoup de temps pour examiner les documents. À une ou deux reprises, des documents volumineux ont été communiqués moins d'un jour avant la comparution du témoin. Vu le calendrier

21 *Délibérations du Comité spécial du Sénat sur les accords de l'aéroport Pearson*, 21 septembre 1995, à la p. 22:10.

22 L'article applicable de la *Loi sur l'accès à l'information* est libellé ainsi :

Renseignements de tiers

20(1) Le responsable d'une institution fédérale est tenu, sous réserve des autres dispositions du présent article, de refuser la communication de documents contenant :

- a) des secrets industriels de tiers;
- b) des renseignements financiers, commerciaux, scientifiques ou techniques fournis à une institution fédérale par un tiers, qui sont de nature confidentielle et qui sont traités comme tels de façon constante par ce tiers;
- c) des renseignements dont la divulgation risquerait vraisemblablement de causer des pertes ou profits financiers appréciables à un tiers ou de nuire à sa compétitivité;
- d) des renseignements dont la divulgation risquerait vraisemblablement d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

serré, l'énorme série de documents qu'il fallait organiser et examiner, et le grand nombre de personnes, fonctionnaires et autres, qui participaient à la communication des documents, il ne faut peut-être pas s'en étonner. En revanche, un incident qui s'est produit juste avant la fin des audiences n'a pas manqué de susciter de vives inquiétudes.

Au début du mois de septembre, le Comité a été informé qu'il restait un certain nombre de documents qui n'avaient pas encore été communiqués soit parce qu'ils ne concernaient pas un témoin, soit parce qu'ils n'étaient pas prévus au calendrier ou encore qu'ils débordaient le cadre de la déposition prévue. Le ministère de la Justice a aussi indiqué que les documents étaient à l'étude et qu'ils seraient communiqués dans un proche avenir. Aucune autre mention de ces documents n'a été faite jusqu'à leur dépôt au bureau du greffier à 16 h, le vendredi 3 novembre. Le dernier jour des audiences était fixé au lundi suivant.

La communication de ces documents à la toute dernière minute était tout à fait déconcertante. Les fonctionnaires de la Justice n'ont fait aucun effort pour donner au Comité un préavis de la communication de ces documents. En outre, le fait qu'un certain nombre des documents aient été très pertinents et directement liés à des témoignages déjà entendus a suscité beaucoup d'inquiétude chez les membres du Comité. Le ministère de la Justice a indiqué que ces documents avaient tout simplement été oubliés lors de l'examen initial.

En août, le Comité a appris qu'il restait un grand nombre de documents inédits et non confidentiels. De l'avis du ministère de la Justice, rien dans ces documents ne pouvait intéresser le Comité. Les fonctionnaires de la Justice ont accepté de produire une liste maitresse des documents. Le 16 novembre 1995, soit quatre mois après le début de l'enquête et après que le Comité a eu terminé ses audiences, la liste des 6 015 documents a été remise au conseiller juridique.

2. Refus des témoins fonctionnaires de répondre aux questions

Le Comité s'est heurté à une deuxième difficulté pendant les premiers jours de l'enquête lorsque d'importants hauts fonctionnaires fédéraux ont refusé de répondre directement aux questions qui leur étaient posées. Les fonctionnaires ont invoqué un statut spécial en raison du caractère confidentiel des documents du Ministère et du serment de discrétion de la fonction publique.

Il a été fait référence à une série de lignes de conduite du Conseil privé intitulées *Notes sur les responsabilités des fonctionnaires à l'égard des comités parlementaires*²³. Sous la rubrique *Réponses aux questions posées par le Comité*, figure l'avis suivant :

23 Bureau du Conseil privé, décembre 1990.

On s'attend à ce que les personnes qui témoignent devant un comité parlementaire répondent à toutes les questions du comité. Cependant, quelques considérations viennent tempérer l'application de ce principe dans le cas des fonctionnaires, puisque ces derniers comparaissent *au nom de leur ministre*.

Les fonctionnaires ont la responsabilité générale, aussi bien que l'obligation légale, de tenir confidentiels les renseignements dont ils peuvent avoir connaissance dans l'exercice de leurs fonctions. (...)

De façon générale, (...) les fonctionnaires ont l'obligation de se comporter de manière à ce que les ministres puissent toujours avoir pleinement confiance en la loyauté et la fidélité de ceux qui les servent. (...) Si les fonctionnaires violent la confiance des ministres, ils minent l'exercice efficace (et démocratique) du gouvernement. S'ils agissent ainsi croyant avoir des obligations plus fortes envers le Parlement, alors ils minent *le principe fondamental de la responsabilité gouvernementale, à savoir que ce sont les ministres, et non les fonctionnaires, qui sont comptables envers la Chambre des communes pour les actes du gouvernement*²⁴. (Souliné dans l'original)

Nous soutenons que cette position est incompatible avec le point de vue exprimé dans la première partie du présent document. Erskine May, par exemple, déclare explicitement que :

[Le témoin] est tenu cependant de répondre à toutes les questions que le comité croit utile de lui poser et ne peut en être dispensé, sous prétexte, par exemple, qu'il a fait serment de ne pas révéler les renseignements demandés²⁵.

De la même façon, Joseph Maingot soutient que :

Le témoin doit répondre à toutes les questions qui lui sont posées, sauf si un membre du comité s'oppose à ce que certaines questions soient posées, et sous réserve d'un appel ultime devant le comité de la décision rendue par le président²⁶.

Toutefois, le Comité a décidé de ne pas contraindre les témoins à donner les renseignements recherchés vu que l'ancien ministre des Transports, M. Jean Corbeil, devait comparaître et que l'on pourrait obtenir l'information nécessaire à ce moment-là²⁷.

24 *Ibid.*, p.3.

25 *Supra*, note 10; reproduit dans Beauchesne, *supra*, note 12, cit. 863.

26 *Le privilège parlementaire au Canada*, Cowansville, Éditions Yvon Blais, 1987, p. 195.

27 Avant même le début des audiences, on avait prévu que certains témoins refuseraient peut-être de répondre à des questions. Lors de la séance d'organisation du 8 juin 1995, le président et le vice-président ont adopté la motion suivante:

3. Assermentation des fonctionnaires

Le Comité est habilité à interroger les témoins sous serment. Avant le début des audiences, l'on a soutenu que l'assermentation des témoins était inutile, parce que tous les témoins qui déposent devant les comités parlementaires canadiens doivent dire la vérité, et qu'elle était peu appropriée aux audiences, parce qu'elle leur conférerait un caractère judiciaire et favoriserait une atmosphère de méfiance et de confrontation. De façon traditionnelle, les fonctionnaires qui comparaissent devant les comités ne sont pas assermentés.

Néanmoins, le Comité a choisi d'exercer son pouvoir et de faire assermenter les témoins. Il voulait que les témoins comparaisant devant lui comprennent bien le caractère sérieux de l'enquête. Sachant que bon nombre des déclarations publiques faites à propos des accords de l'aéroport Pearson étaient fondées sur des opinions, des insinuations et des soupçons, le Comité était déterminé à mettre à jour les faits. L'assermentation des témoins devait les inciter à parler et à examiner sérieusement les questions débattues. Quand des avis étaient exprimés, on s'attendait à ce que les témoins présentent des preuves pour les étayer.

Certains ont dit craindre que l'assermentation des fonctionnaires ne les place dans une position de conflit, coincés qu'ils seraient entre l'obligation de dire toute la vérité et l'obligation de réserve envers leur ministre. Par exemple, un haut fonctionnaire qui avait accepté d'être assermenté a ajouté une restriction : «oui, en n'oubliant pas mon serment professionnel»²⁸.

Le Comité a estimé qu'il n'y avait pas de conflit entre le serment de discrétion du fonctionnaire à l'égard des renseignements confidentiels du Ministère et le fait d'avoir fait serment de dire toute la vérité. Ce dernier serment exigeait seulement des témoins qu'ils rendent un témoignage exact et complet au sujet des questions sur lesquelles les règles législatives et les conventions et pratiques acceptées les autorisaient à témoigner.

4. Épuration incohérente et excessive des documents

Le sous-ministre de la Justice, M. Thomson, a reconnu que le processus de communication des documents n'était pas parfait²⁹. Parfois, des documents échappent au processus. Des notes manuscrites confidentielles, figurant au bas de notes de service du greffier du Conseil privé et

... les témoins ne pourront témoigner à huis clos. Si après avoir prêté serment, le témoin refuse de témoigner ou de répondre aux questions, le comité entendra ses raisons. Toutefois, il sera alors libre de mettre en doute les motifs invoqués.

28 Harry Swain, sous-ministre, Industrie Canada. *Délibérations du Comité spécial du Sénat sur les accords de l'aéroport Pearson*, le jeudi 27 juillet 1995, p. 7:4.

29 *Supra*, note 15, p. 22:12.

adressées au premier ministre, par exemple, ont été communiqués par inadvertance. À deux reprises, des documents non censurés ont accidentellement été communiqués par le bureau du ministère de la Justice à des adjoints des sénateurs. D'autres fois, des documents qui avaient été censurés se sont retrouvés ailleurs dans leur version non censurée.

Toutefois, ce qui a retenu davantage l'attention était l'étendue du contrôle exercé sur les documents et l'absence de mécanismes grâce auxquels le Comité aurait pu s'assurer que l'information avait été retenue à bon droit. Il est arrivé, par exemple, que les membres du Comité soient étonnés du nombre de passages retranchés en vertu de l'article 23 (secret professionnel de l'avocat) dans une note de service relativement anodine et portant sur une réunion qui avait eu lieu au ministère des Transports. Quand le texte complet du document a finalement été obtenu, on s'est aperçu que les passages supprimés ne correspondaient pas à des avis donnés par les avocats, mais seulement à des noms d'avocats!

Cet exemple souligne bien le problème auquel fait face le Comité. Lorsqu'un document contient un passage supprimé avec la simple mention «article 23», le Comité n'est pas en mesure de s'assurer que cette information a été retenue à bon droit.

Pour résoudre ce problème, il a été proposé que le conseiller juridique du Comité puisse, après avoir prêté le serment du secret professionnel, examiner les documents gouvernementaux non censurés de façon à garantir que les principes appropriés ont été appliqués correctement. Il a été fait référence au fait que d'autres personnes, qui ne sont pas des fonctionnaires, soit les gens de Scott & Aylen, de Lindquist Avey ainsi que M. Nixon, avaient eu le droit d'examiner des documents confidentiels après avoir prêté un tel serment.

La proposition a toutefois été rejetée pour le motif que le conseiller du Comité n'était pas un mandataire du gouvernement à la différence des autres personnes mentionnées ci-dessus³⁰.

30 M^{me} Bloodworth et M. Thomson, dans leur témoignage devant le Comité, ont abordé cette question; *supra*, note 15, p. 22:74; 22:87, 22:90.

M^{me} Bloodworth : M. Nelligan, au contraire de ces autres personnes, fait partie du comité, non pas du gouvernement tel que je l'ai décrit. En ce qui concerne les documents confidentiels du Cabinet, les personnes contre lesquelles vous les protégez pour le compte des ministres et des anciens ministres relèvent des autres éléments partisans de notre système; soit les branches législatives. La position de M. Nelligan est donc tout à fait différente de celles de M. Nixon ou de Scott et Aylen en ce sens qu'il est le conseiller juridique du comité et qu'il ne fait pas partie du gouvernement. ...

M. Nelligan : Très bien. En supposant qu'il ait ce large pouvoir juridique, n'a-t-il pas alors besoin d'au moins quelque aide de la part des témoins et le bénéfice de documents ministériels pour déterminer s'il y a lieu d'exercer ce grand pouvoir, et n'y a-t-il pas quelque moyen pour le ministère et les témoins de l'aider à prendre des décisions valides quant aux renseignements à divulguer publiquement?

Tout ce que je demande c'est une aide pour pouvoir résoudre ces impasses sans que le tout soit exposé en public. N'y a-t-il pas moyen que quelqu'un revoie ces questions pour déterminer si elles sont d'importance suffisante

5. Application du secret professionnel de l'avocat

À quelques reprises, des renseignements n'ont pas été communiqués au Comité à cause du privilège du secret professionnel de l'avocat. Ce privilège n'est pas opposable au Comité qui a le pouvoir d'obtenir des renseignements³¹.

Cependant, M. Thomson a déclaré dans son témoignage qu'il fallait suivre les principes suivants en ce qui concerne la revendication du privilège du secret professionnel de l'avocat :

- i. Le privilège du secret professionnel appartient au client et non pas à l'avocat et, par conséquent, le client peut y renoncer.
- ii. Même si le privilège s'applique et que le client refuse d'y renoncer, le Comité a en fin de compte le droit d'exiger que l'information soit communiquée.
- iii. Les comités devraient rarement exercer ce droit à cause de l'effet de dissuasion que la communication de renseignements protégés par le privilège aurait sur la relation entre l'avocat et son client, et à cause des répercussions possibles sur les litiges externes. Les avocats du ministère de la Justice devraient avoir la possibilité d'expliquer pourquoi l'information ne devrait pas être communiquée.
- iv. Dans les cas où le Comité tient absolument à obtenir communication et où le client refuse de renoncer au privilège du secret professionnel, on devrait discuter pour déterminer comment l'information pourrait être communiquée au Comité d'une façon qui soit le moins dommageable possible pour le client et pour la relation entre l'avocat et son client.

et conseiller le comité quant à l'opportunité pour lui de se prévaloir de ses droits juridiques?

M. Thomson : ...M. Nelligan, vous soulevez là une question valide, en ce sens que lorsque nous voyons une revendication de secret, nous aimons avoir au moins une idée de la raison, dans chaque cas particulier. Évidemment, il faut veiller à ce que cette détermination de la raison n'aboutisse pas tout simplement à la divulgation du renseignement lui-même. Nous essayons donc de régler ces cas individuellement, lorsqu'un cas particulier se présente où vous avez des questions ou des préoccupations.

Mais vous soulevez là une bonne question et je pense qu'il serait intéressant de l'explorer plus avant. Il s'agit de voir comment on pourrait régler cela à l'avenir, s'il serait possible d'indiquer un peu plus clairement pourquoi la confidentialité est revendiquée dans un cas particulier, afin que vous ayez au moins quelque idée de la raison sans aller jusqu'à divulguer le renseignement lui-même, c'est-à-dire vous en dire un peu plus que d'indiquer simplement le numéro de l'article de la loi. Nous ne l'avons pas fait jusqu'à présent...

31 Voir Erskine May, *supra*, note 24 :

[Le témoin] est tenu cependant de répondre à toutes les questions que le comité croit utile de lui poser et ne peut en être dispensé sous prétexte (...) qu'il s'agit d'une communication privilégiée du type de celles que protège le secret professionnel de l'avocat (...).

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- v. S'il est impossible d'en arriver à une entente, le Comité pourra en référer au Sénat ou à la Chambre des communes, qui tranchera la question.

En réponse à une demande formulée par le Comité pour que les avocats du ministère de la Justice comparaissent devant lui afin de témoigner au sujet des avis juridiques qu'ils ont donnés ou peuvent avoir donnés, quant à savoir à quel moment le gouvernement était légalement lié par les accords Pearson, M. Thomson s'est montré très réticent. Il a soutenu que le Comité avait déjà entendu le point de vue du négociateur en chef du gouvernement sur la question et, vu qu'aucun conseil juridique n'avait été effectivement donné, il n'appartenait pas aux avocats du ministère de la Justice de donner des avis juridiques à un comité parlementaire sur la question de savoir quelle aurait pu être la responsabilité du gouvernement si un avis avait été demandé.

Après que deux invitations à comparaître eurent été déclinées, le Comité a décidé de citer les témoins à comparaître. Les fonctionnaires du ministère de la Justice, soutenant qu'ils comparaissaient «volontairement» ont accepté de témoigner sur les conseils qu'ils avaient donnés et non sur les conseils qu'ils auraient pu donner si on les leur avait demandés.

6. Impossibilité pour le Comité d'obtenir des documents essentiels du Conseil du Trésor

Le dernier, et à n'en pas douter l'un des plus frustrants problèmes qu'a rencontrés le Comité, a été l'impossibilité d'obtenir certains documents du Conseil du Trésor jugés essentiels.

En août 1993, le ministère des Transports a sollicité l'approbation du Conseil du Trésor afin de pouvoir conclure les accords de l'aéroport Pearson. Pour l'aider dans ses délibérations, des documents contenant des avis et des analyses rédigés par des fonctionnaires gouvernementaux, y compris un examen des dangers et des risques que pouvaient comporter ces accords, ont été soumis au Conseil du Trésor.

M^{me} Bloodworth a témoigné que ces présentations au Conseil du Trésor étaient des documents confidentiels du Cabinet du gouvernement Campbell. Elle a expliqué qu'il existait au Canada une convention bien établie, respectée par les gouvernements successifs, qui veut qu'une administration nouvellement élue ne puisse pas avoir accès aux documents confidentiels du Cabinet et des gouvernements antérieurs. Quand il se produit un changement de gouvernement, les dossiers du Cabinet sont confiés au greffier du Conseil privé³².

Contrairement à cette présumée convention, les présentations faites en août 1993 au Conseil du Trésor ont été communiquées à M. Nixon, manifestement par erreur, peu après qu'il eut été chargé

32 *Supra*, note 15, p. 22:7.

par M. Chrétien de mener une étude sur les accords de l'aéroport Pearson. Quand M. Nixon et son personnel ont comparu devant le Comité, on s'est aperçu que non seulement ils avaient examiné ces documents, mais ils s'en étaient inspirés largement pour rédiger leur rapport final. M. Stephen Goudge, conseiller juridique de M. Nixon, a déclaré ce qui suit :

Est-ce que certaines de mes affirmations étaient étayées par la présentation au Conseil du Trésor? Absolument; absolument. Ça ne fait aucun doute. Certaines parties de mon rapport à M. Nixon étaient fondées sur la présentation au Conseil du Trésor³³.

La communication des présentations au Conseil du Trésor à M. Nixon met en évidence le fait que les documents de cette nature ne sont pas communément considérés comme des documents du Cabinet. Un comité parlementaire devrait avoir accès à de prétendus documents du Cabinet composés de rapports qui contiennent des analyses et des discussions de fond, d'autant plus que, dans le cas qui nous occupe, ils ont été communiqués à M. Nixon et ont influé sur sa décision.

En plus d'invoquer les règles de confidentialité relatives aux documents du Cabinet, les fonctionnaires du Conseil privé ont affirmé que la communication de ces documents sans l'autorisation de l'ex-premier ministre, M^{me} Kim Campbell, contreviendrait à la convention restreignant l'accès aux documents confidentiels des gouvernements antérieurs. Nous estimons pour notre part que cet usage qui empêche un gouvernement de consulter les documents confidentiels des gouvernements précédents ne s'applique et ne devrait s'appliquer qu'aux documents du Cabinet restreint qui sont politiquement délicats. Manifestement, les présentations au Conseil du Trésor que le Comité a cherché à obtenir ne tombent pas dans cette catégorie restreinte.

Pour compliquer les choses, les documents du Conseil du Trésor ont été divulgués à un journaliste, Greg Weston, du *Ottawa Citizen*, en septembre 1993. Les 25 et 26 septembre 1993, dans deux articles parus dans ce quotidien, M. Weston s'appuyait largement sur des renseignements contenus dans les présentations au Conseil du Trésor pour critiquer sévèrement les accords de l'aéroport Pearson³⁴. Plus récemment, le 25 septembre 1995, M. Weston a écrit un autre article où il soutenait que l'enquête du Sénat sur ces accords était une perte de temps et d'argent parce que, sans les présentations au Conseil du Trésor, le Comité n'avait pas toute l'information voulue³⁵.

En réponse, le Comité a invité à deux reprises M. Weston à comparaître et à lui communiquer les documents en question. Le rédacteur en chef, au nom de M. Weston, a refusé l'invitation du

33 Transcription du Comité spécial du Sénat sur les accords de l'aéroport Pearson, le jeudi 28 septembre 1995, p.27:5-6.

34 Greg Weston, «Tories ignored warnings of airport costs», *The Ottawa Citizen*, 25 septembre 1993 à la p. A1 et Greg Weston, «Privatizing Pearson: The anatomy of a deal», *The Ottawa Citizen*, 26 septembre 1995, p. A-1.

35 «Pearson inquiry whitewash spreads beyond deleting details», *The Ottawa Citizen*, 25 septembre 1995, p. A-2.

Comité, en disant que le Comité devrait s'adresser au gouvernement. Lorsqu'on a fait remarquer au rédacteur en chef que le Comité ne pouvait savoir quels étaient au juste les documents en possession de M. Weston sur lesquels il s'appuyait pour jeter le doute sur l'enquête du Comité, le journal a accepté de publier un article supplémentaire indiquant exactement les documents que M. Weston avait en main³⁶.

Le Comité a ensuite rédigé un rapport au Sénat demandant qu'une adresse soit présentée au gouverneur général pour que les présentations du Conseil du Trésor soient communiquées au Comité. La procédure permettant de s'adresser au gouverneur général pour lui demander la communication des documents est prévue à l'article 133 du *Règlement du Sénat du Canada*³⁷.

D'après le *Manual of Official Procedure of the Government of Canada*, le caractère confidentiel des avis contenus dans les documents du Cabinet protège le gouverneur général et la communication de ces documents relève de sa prérogative.

La communication des documents du Cabinet est déterminée par le serment du conseiller privé et par le principe que les décisions du Cabinet constituent des conseils donnés au Souverain qui ne peuvent être révélés qu'avec son consentement. L'autorisation est demandée par l'entremise du premier ministre qui peut recommander au gouverneur général de l'accorder, de la limiter ou de la refuser³⁸.

Le Sénat est actuellement saisi de la question.

36 Greg Weston, «Dear senators: Below please find a road map to the lost Pearson papers», *The Ottawa Citizen*, 12 octobre 1995, p. A2.

37 La Règle 133 prévoit que :

Lorsqu'un compte ou document concerne la prérogative royale, une adresse doit être présentée au Gouverneur général le priant d'autoriser que ce compte ou ce document soit communiqué au Sénat.

38 Bureau du Conseil privé, 1968, article 9 sous la rubrique «Cabinet Records», p. 27.

Recommandations

1. Meilleure collaboration avec le ministère de la Justice

En dépit des affirmations des fonctionnaires gouvernementaux qui prétendent que tous les efforts ont été déployés pour communiquer les documents aussi vite que possible, nous estimons que le processus de communication des documents peut encore être grandement amélioré. La communication imprévue de documents importants, par exemple, juste avant le dernier jour des audiences et plus de quatre mois après le début de celles-ci était, à notre avis, inacceptable. En outre, le fait de ne pas avoir transmis avant la fin des audiences une liste des documents non confidentiels qui n'ont pas été communiqués témoigne de la réticence générale du ministère de la Justice à communiquer de l'information³⁹ et de la nécessité d'une meilleure collaboration.

Nous recommandons que le comité parlementaire mixte spécial dont il est question à la recommandation 5 soit chargé de collaborer avec le ministère de la Justice à l'élaboration de règles sur la consultation de documents lors d'enquêtes futures.

2. Abus du privilège du secret professionnel de l'avocat

Il semble évident d'après le nombre et l'endroit des passages supprimés dans les documents, au nom du privilège du secret professionnel de l'avocat, que l'application par le ministère de la Justice de cette règle du secret professionnel était nettement excessive.

Nous partageons tout à fait le point de vue exprimé par le Commissaire à l'information du Canada :

La plupart des avis juridiques, si éculés, généraux et indiscutables qu'ils soient sont jalousement tenus secrets. Selon l'esprit de transparence, le vaste réservoir d'avis juridiques que détient l'administration publique sur tous les sujets possibles devrait être mis à la disposition des membres du public qui s'y intéressent.

39 Il est intéressant de noter que les avocats qui comparaissent devant la commission d'enquête sur la Somalie se sont plaints des fortes pressions exercées par les fonctionnaires du ministère de la Justice pour restreindre l'accès à des témoins éventuels : «Somalia inquiry lawyers reject Justice demands», *The Globe and Mail*, 1^{er} novembre 1995, p. A11. Dans une lettre à toutes les parties ayant qualité pour comparaître à l'enquête, le ministère de la Justice déclarait essentiellement que le Ministère devait recevoir un préavis avant que les fonctionnaires, les anciens fonctionnaires ou le personnel militaire ne soient contactés. M. le juge Gilles Létourneau de la Cour fédérale, qui préside l'enquête, a dit craindre que cette lettre ne dissuade les témoins éventuels.

Ces opinions ont été payées avec l'argent des contribuables et à moins que l'on ne puisse raisonnablement affirmer qu'une divulgation entraînerait un préjudice pour la conduite des affaires gouvernementales, elles devraient être communiquées⁴⁰.

Nous recommandons que les comités parlementaires aient accès aux avis juridiques préparés par le personnel du ministère de la Justice, sauf dans les cas où cela risquerait de compromettre la position du gouvernement du Canada sur une question dont les tribunaux sont ou pourraient être saisis. C'est au comité parlementaire mixte spécial dont il est fait mention à la recommandation 5 qu'on devrait confier l'élaboration des règles d'accès aux avis juridiques.

3. Restreindre la notion de «document confidentiel du Cabinet»

Pendant les audiences, les membres du Comité ont fait un effort conscient pour respecter les documents confidentiels du Cabinet. Toutefois, nous nous demandons si le principe de la confidentialité de ces documents n'est pas interprété de façon trop large par les fonctionnaires gouvernementaux.

En 1986, le Comité permanent de la Justice et du Solliciteur général de la Chambre des communes a publié un rapport unanime intitulé *Une question à deux volets : Comment améliorer le droit d'accès à l'information tout en renforçant les mesures de protection des renseignements personnels*. Après avoir examiné les raisons qui militent en faveur du maintien du secret des documents du Cabinet, le Comité écrit ceci :

Néanmoins, le Comité ne croit pas que le matériel documentaire renfermant des données factuelles à l'usage du Cabinet devrait être automatiquement exclu du champ d'application des deux lois. Mais avant que les notes du Cabinet, les documents de travail et autres documents puissent être divulgués, il serait essentiel d'en retirer les avis subjectifs en matière de politique. Le matériel factuel devrait généralement être accessible en vertu des deux lois⁴¹.

Nous sommes en total désaccord avec les raisons invoquées par le Bureau du Conseil privé pour ne pas communiquer les présentations au Conseil du Trésor dont il a été question précédemment. Il ne faut pas oublier que ces documents ne contiennent que des analyses factuelles générales, qu'ils ont été transmis à M. Nixon et qu'ils ont été divulgués à un journaliste qui a fait état publiquement de leur contenu. Il est urgent d'élaborer de nouvelles règles sur ce qui constitue un «document

40 *Rapport annuel 1993-1994*, Commissaire à l'information du Canada, Ottawa, ministère des Approvisionnement et Services Canada, 1994, p. 30.

41 Ottawa, Chambre des communes, 1986. Le Commissaire à l'information du Canada dans son *Rapport annuel 1993-1994*, *ibid*, p. 32, fait une recommandation semblable.

confidentiel du Cabinet» et sur les cas dans lesquels ceux-ci ne doivent pas être considérés comme confidentiels.

Nous recommandons que ces règles soient élaborées par le comité parlementaire spécial mixte dont il est fait mention à la recommandation 5 ci-dessous.

4. Transparence accrue du processus de contrôle

Lorsque les passages d'un document étaient supprimés, le Comité était renvoyé à un article de la *Loi sur l'accès à l'information* qui indiquait en termes généraux les motifs de la suppression. Toutefois, lorsqu'un document tout entier ne lui était pas communiqué, le Comité n'en était pas informé.

Nous recommandons que le conseiller juridique d'un comité soit autorisé, le cas échéant, à prendre connaissance de documents non expurgés après avoir prêté le serment de secret professionnel. Celui-ci pourra ensuite indiquer au comité s'il estime que les directives en matière d'accès à l'information ont été correctement appliquées. En l'absence d'avis de son conseiller, un comité n'a aucun moyen de savoir s'il doit contester les décisions prises par des fonctionnaires.

5. Nécessité d'un examen plus poussé

Le droit du Sénat et de la Chambre des communes de faire enquête sur des questions est un élément fondamental du processus des comités parlementaires. Il est par conséquent essentiel de reconnaître et de respecter les larges pouvoirs des comités parlementaires de convoquer des personnes et d'ordonner la production de documents et de dossiers. Il ne faut pas que le droit du Parlement de faire enquête s'atrophie du simple fait que les comités parlementaires exercent rarement tous leurs droits et que ceux-ci sont par conséquent méconnus.

Nous recommandons que, pour les raisons que nous avons exposées, un comité parlementaire mixte spécial examine les pouvoirs des comités parlementaires et leur capacité de s'acquitter de la mission qui leur a été confiée.

Annexe A - Témoins

Témoins	Organisation	Date	Fascicule
Baker, Gordon	Conseiller juridique, Matthews Group	13 septembre 1995	18
		14 septembre 1995	19
Bandeau, Robert	Président intérimaire, Greater Toronto Regional Airport Authority	25 juillet 1995	5
Barbeau, Victor	Sous-ministre adjoint, Transports Canada	11 juillet 1995	2
		12 juillet 1995	3
Berigan, Gerry	Directeur régional des aéroports, région de l'Atlantique, Transport Canada	26 juillet 1995	6
Bloodworth, Margaret	Bureau du Conseil privé	21 septembre 1995	22
Bourgon, Jocelyne	Greffier du Conseil privé	14 septembre 1995	19
Broadbent, David	Ancien négociateur en chef, Transports Canada	2 août 1995	9
Cappe, Mel	Ancien sous-secrétaire, Conseil du Trésor du Canada	22 août 1995	14
Church, Gardner	Ancien sous-ministre, gouvernement de l'Ontario	25 juillet 1995	5
Clayton, Al	Bureau des biens immobiliers et du matériel, Conseil du Trésor du Canada	12 juillet 1995	3
		22 août 1995	14
Cloutier, John	Conseiller financier principal, Cessions d'aéroports, Transports Canada	26 juillet 1995	6
Corbeil, L'hon. Jean	Ancien ministre des Transports	20 septembre 1995	21
Coughlin, Peter	Président de Pearson Development Corporation	12 septembre 1995	17
Crosbie, Allan	Crosbie & Company Inc.	26 septembre 1995	25
		27 septembre 1995	26
		28 septembre 1995	27
		6 novembre 1995	29
Desbois, Cameron	Vice-président et avocat général, Air Canada	16 août 1995	12
Desmarais, John	Conseiller principal au sous-ministre adjoint, Groupe des aéroports	3 août 1995	10
		15 août 1995	11
		23 octobre 1995	29

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Témoins	Organisation	Date	Fascicule
Dickson, Don	Ancien directeur général, Politique et opérations financières, Transports Canada	26 juillet 1995	6
Doucet, Fred	Fred Doucet Consulting International	24 août 1995	16
Douglas, Austin	Ancien directeur exécutif associé, Transports Canada	11 juillet 1995	2
Durrett, Lamar	Vice-président exécutif des services généraux, Air Canada	16 août 1995	12
Edlund, L. Constance	Directrice intérimaire, Administration des prêts aux petites entreprises, Industrie Canada	27 juillet 1995	7
Emerson, David	Président-directeur général, Vancouver Local Airport Authority	12 juillet 1995	3
Farquhar, Michael	Directeur général, Cessions d'aéroports, Transports Canada	27 juillet 1995 27 juillet 1995	5 7
Fiore, Dominic	Ancien directeur principal des biens immobiliers, Air Canada	16 août 1995	12
Fox, William John	Earncliffe Strategy Group	23 août 1995	15
Gershberg, Sid	Secrétaire adjoint, Secteur des programmes économiques, Conseil du Trésor du Canada	22 août 1995	14
Goudge, Stephen	Gowling, Strathy and Henderson	26 septembre 1995 27 septembre 1995 28 septembre 1995 6 novembre 1995	25 26 27 29
Green, Robert, c.r.	Avocat général principal, Transports Canada	23 octobre 1995	29
Harrema, Gary	Président, municipalité régionale de Durham	25 juillet 1995	5
Heard, Andrew	Professeur associé, Université Simon Fraser	25 septembre 1995	24
Hession, Raymond	Ancien président de Paxport Inc.	1 août 1995 2 août 1995	8 9

Annexe A - Témoins

Témoins	Organisation	Date	Fascicule
Jolliffe, Keith	Conseiller financier, Groupe de l'aviation	3 août 1995	10
		15 août 1995	11
Kozicz, Peter	Vice-président, Pearson Development Corporation	21 septembre 1995	22
L'Abbé, Robert	Raymond, Chabot, Martin et Paré	27 juillet 1995	7
Labarge, Paul	Blake, Cassels & Graydon	21 septembre 1995	22
Labelle, Huguette	Ancienne sous-ministre, Transports Canada	1 août 1995	8
Lane, Ron	Ancien président du comité d'évaluation	26 juillet 1995	6
Lewis, L' hon. Doug	Ancien ministre des Transports	13 juillet 1995	4
Mallory, James	Professeur émérite, Université McGill	25 septembre 1995	24
Matthews, Donald	Président de Matthews Group Ltd	13 septembre 1995	18
		14 septembre 1995	19
Matthews, Jack	Président, Paxport Inc.	21 septembre 1995	22
McCallion, Hazel	Mairesse de Mississauga	19 septembre 1995	20
Meinzer, Gerry	Ancien président intérimaire, Greater Toronto Regional Airport Authority	25 juillet 1995	5
Metcalfe, Herb	Capitol Hill Group	23 août 1995	15
Mulder, Nick	Sous-ministre, Transports Canada	11 juillet 1995	2
Near, Harry	Earncliffe Strategy Group	23 août 1995	15
Neville, William	Hession, Neville et Associés	24 août 1995	16
Nixon, Robert	Président du conseil d'administration, Energie atomique du Canada Limitée	26 septembre 1995	25
		27 septembre 1995	26
		28 septembre 1995	27
		6 novembre 1995	29
Pascoe, Andrew	Andrew Pascoe Inc.	24 août 1995	16
Pigeon, Jacques, c.r.	Avocat général, Transports Canada	23 octobre 1995	29
Power, Wayne	Directeur de la transition, Aéroport international Pearson, Transports Canada	26 juillet 1995	6

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Témoins	Organisation	Date	Fascicule
Quail, Ranald	Ancien sous-ministre adjoint, Transports Canada	23 août 1995	15
Robinson, David	Directeur des biens immobiliers, Air Canada	16 août 1995	12
Rowat, William	Ancien sous-ministre adjoint, Transports Canada	3 août 1995	10
		15 août 1995	11
		23 octobre 1995	29
Shortliffe, Glen	Ancien greffier du Conseil privé et ancien sous-ministre des Transports	13 juillet 1995	4
		25 septembre 1995	24
Simke, John	Price Waterhouse	23 août 1995	15
Sinclair, Gordon	Ancien président de l'Association du Transport aérien du Canada	17 août 1995	13
Spencer, Norman	Vice-président exécutif, Pearson Development Corporation	12 septembre 1995	17
Stehelin, Paul	Deloitte & Touche	17 août 1995	13
Swain, Harry	Sous-ministre, Industrie Canada	27 juillet 1995	7
Thomson, George	Sous-ministre, ministère de la Justice	21 septembre 1995	22
Turner, Stephen	Direction générale de la vérification et de l'évaluation, Travaux publics et Services gouvernementaux	12 juillet 1995	3
Vineberg, Robert	Conseiller juridique, Pearson Development Corporation	12 septembre 1995	17
Warwick, Ed	Ancien directeur général, Grands projets de l'Etat, Aéroport Pearson	11 juillet 1995	2
		12 juillet 1995	3
Wilson, John	Professeur, Université de Waterloo	25 septembre 1995	24

Aménagement de l'aérogare 3 à l'Aéroport international Lester B. Pearson

Sept. 1986	Le ministre des Transports, John Crosbie, annonce un projet d'aménagement d'un nouvel aérogare à l'Aéroport international Pearson et invite les entreprises du secteur privé à manifester leur intérêt pour la conception, le financement, la construction et l'exploitation de l'aérogare numéro 3.
18 déc. 1986	Demande de propositions pour la construction de l'aérogare 3.
9 avril 1987	Le ministre Crosbie annonce, pour les aéroports, une nouvelle politique qui vise, en général, à mieux servir les intérêts de la communauté, à rehausser le potentiel de développement économique de la région, et à permettre d'exploiter le réseau national d'aéroports de manière plus rentable. La politique comprend huit principes directeurs concernant les cessions d'aéroports.
1 ^{er} mai 1987	Le ministre Crosbie annonce que l'aménagement de l'aérogare 3 a suscité quatre propositions de l'Airport Development Corporation (Huang & Danczkay), de Falcon Star, du consortium Bramalea-Wardair et du consortium Cadillac Fairview-American Airlines.
22 juin 1987	L'Airport Development Corporation est retenue comme promoteur de choix pour la construction et l'exploitation de l'aérogare 3 à l'Aéroport Pearson.
14 oct. 1987	Le ministre Crosbie annonce que le Conseil du Trésor autorise Transports Canada à conclure un accord avec l'Airport Development Corporation.
20 nov. 1987	Signature d'un accord avec l'Airport Development Corporation.
21 avril 1988	Signature du bail foncier de l'aérogare 3 avec l'Airport Development Corporation. Début des travaux de construction de l'aérogare 3 en mai.
14 juin 1989	Claridge Properties Ltd. acquiert le contrôle de l'aérogare 3 de Huang and Danczkay.
21 fév. 1991	Ouverture de l'aérogare 3 (aménagé au coût de 520 millions).
5 avril 1992	Claridge acquiert 73 % de l'aérogare 3. Lockheed Air Terminals of Canada acquiert le reste.

Demande de propositions pour les aérogares 1 et 2

4 janv. 1988	Glen Shortliffe est nommé sous-ministre des Transports.
Fév. 1988	Approbation du rapport intitulé «Modèle de gestion des aéroports de Transports Canada» qui renferme 117 recommandations en vue d'accroître les recettes et le recouvrement des coûts.
30 mars 1988	Création d'un Groupe de gestion des aéroports à Transports Canada pour répondre aux propositions d'organismes locaux admissibles qui veulent prendre possession ou prendre la direction des aéroports locaux.
Avril 1988	Benoit Bouchard devient ministre des Transports.

Annexe B - Chronologie

Juil. 1988	Création d'un Comité consultatif sur la cession des aéroports composé de huit membres et dirigé par le sous-ministre des Transports pour conseiller le ministre au sujet des propositions de cession. Le ministère crée un Groupe de travail sur la cession des aéroports pour négocier la cession des grands aéroports fédéraux à des administrations locales.
12 déc. 1988	Le ministère des Transports annonce qu'il réduit de 15 % les mouvements d'aéronefs (décollages ou atterrissages) aux heures de pointe et les plafonne à 70 afin de diminuer les retards à l'Aéroport Pearson.
5 janv. 1989	Au nom du groupe Matthews, Ray Hession rencontre Glen Shortliffe qui lui donne un aperçu des objectifs stratégiques du gouvernement pour les prochaines années et lui suggère de rencontrer le directeur exécutif du Groupe de gestion des aéroports.
28 fév. 1989	Signature d'un protocole entre Air Canada (Doug Port) et Transports Canada (Chern Heed) concernant le financement et le réaménagement de l'aérogare 2.
Avril 1989	Le Conseil de la communauté urbaine de Toronto charge un groupe de travail de se pencher sur la création d'une Greater Toronto Airports Authority.
Avril 1989	L'Airport Development Corporation présente un Plan conceptuel d'expansion de l'Aéroport Pearson.
24 mai 1989	Ray Hession rencontre le sous-ministre adjoint des Transports, Victor Barbeau, pour discuter de l'aménagement de l'Aéroport Pearson.
31 mai 1989	Ray Hession rencontre le sous-ministre adjoint des Transports, Kenneth Sinclair, et le sous-ministre des Finances, Fred Gorbet, pour discuter de l'Aéroport Pearson et les aviser de la présentation prochaine d'une proposition spontanée.
Mai 1989	Ajout de 36 principes supplémentaires (aux 8 principes directeurs du 9 avril 1987) pour guider les groupes désireux de gérer des aéroports de Transports Canada partout au pays.
Juin 1989	Le Groupe de travail du Parti libéral dirigé par John Nunziata arrive à la conclusion que l'Aéroport Pearson est l'un des pires au monde et présente, à cause du trafic élevé, de grands risques de collision.
Juin/juil. 1989	Le gouvernement fédéral et les dirigeants de groupes locaux à Edmonton, Calgary, Vancouver et Montréal signent des lettres d'intention d'amorcer des négociations officielles sur la cession des aéroports.
13 juil. 1989	Ray Hession rencontre le vice-président exécutif d'Air Canada, Dennis Groom, pour discuter de sa proposition concernant l'Aéroport Pearson.
26 juil. 1989	Entente entre Transports Canada (Gerry Berigan et Brian Kelly) et Air Canada (Denis J. Groom) sur les principes d'un bail de longue durée et l'aménagement de nouvelles pistes. L'entente porte aussi sur d'autres questions comme le déplacement de certains vols nolisés à Hamilton.

Annexe B - Chronologie

17 août 1989	Glen Shortliffe signe, au nom de Transports Canada, une lettre confirmant que le gouvernement accepte l'accord négocié avec Air Canada le 26 juillet (principes directeurs du bail d'Air Canada).
22 août 1989	Glen Shortliffe écrit à Ray Hession pour lui signaler que le processus de Demande de propositions sera ouvert et public.
Sept. 1989	Des scénarios de référence pour les aéroports de Vancouver, Montréal, Edmonton et Calgary sont établis pour le Groupe de travail sur la cession des aéroports. Les groupes locaux doivent examiner les administrations aéroportuaires locales créées dans d'autres villes comme Moncton, Winnipeg, Windsor, Thunder Bay, Kamloops et Québec. Le Greater Toronto Co-ordinating Committee cherche à promouvoir l'idée d'une administration aéroportuaire locale pour l'Aéroport de Toronto.
25 sept. 1989	Paxport Management Inc., une co-entreprise formée par le groupe Matthews et Bramalea Limited, présente au ministre Bouchard une proposition spontanée visant à privatiser les aéroports 1 et 2 de l'Aéroport Pearson.
2 oct. 1989	Ray Hession informe plusieurs personnes de la proposition de Paxport et sollicite l'occasion d'en discuter avec elles. Ces réunions ont lieu durant les mois suivant.
2 oct. 1989	Victor Barbeau procède à un examen critique de la proposition spontanée de Paxport pour Glen Shortliffe. Il note entre autres que le ministre s'est engagé à demander une étude environnementale avant de prendre une décision finale.
28 nov. 1989	Annonce conjointe de Transports Canada et d'Air Canada d'améliorations, au coût de 52 millions, à l'aéroport 2.
23 fév. 1990	Doug Lewis devient ministre des Transports.
16 mars 1990	Le président de la communauté urbaine de Toronto, Alan Tonks, écrit au ministre Lewis pour le mettre au courant des travaux d'un groupe de travail communautaire sur les mérites d'une administration aéroportuaire locale à Toronto.
20 mars 1990	Production d'un document d'information ministériel pour le ministre sur l'Aéroport Pearson. Thèmes abordés : situation du trafic, demande et capacité, organisation, situation financière, indicateurs de rendement, impact économique, gestion du bruit, déchets internationaux, rénovation des aéroports, problèmes environnementaux, et ainsi de suite.
4 avril 1990	Gerry Berigan de Transports Canada produit une analyse détaillée de la proposition de Ray Hession.
23 avril 1990	Le Comité exécutif d'Air Canada se réunit pour discuter de la situation à l'Aéroport Pearson. Il n'est pas convaincu que le gouvernement insistera pour qu'Air Canada s'associe à un promoteur privé pour aménager l'Aéroport Pearson.
3 mai 1990	Canadian Airports Limited adresse au ministre Lewis les grandes lignes d'une proposition de privatisation de l'Aéroport Pearson. Détails à suivre.

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4 mai 1990	Le ministre Lewis rencontre le président d'Air Canada, Pierre Jeannot, pour discuter de la position d'Air Canada sur le réaménagement de l'Aéroport Pearson. Le 15 mai, M. Jeannot envoie un document de deux pages proposant qu'Air Canada amorcent des négociations avec Transports Canada en vue de se faire céder à bail pour 80 ans le terrain sur lequel l'aérogare 2 se trouve. Air Canada assumerait l'entière responsabilité de la gestion de l'aérogare.
16 mai 1990	Victor Barbeau rencontre des représentants d'Air Canada pour discuter de sa proposition de réaménagement de l'aérogare 2.
1 ^{er} juin 1990	Pierre Jeannot écrit au ministre Lewis pour recommander la proposition de Paxport. Il le rencontre par la suite et lui expose trois points critiques pour Air Canada, y compris la possibilité d'être «pris en otage» en cas de processus d'appel d'offres, de la viabilité à long terme d'Air Canada en tant que société privée et de l'urgence de la situation.
12 juin 1990	Doug Lewis répond à Alan Tonks que Transports Canada est prêt à collaborer étroitement avec les autorités régionales et provinciales pour créer une administration aéroportuaire locale.
18 juin 1990	La British Airport Authority annonce son intention de faire une offre pour le réaménagement de l'Aéroport Pearson.
25 juin 1990	La Canadian Airports Limited rencontre Victor Barbeau et d'autres pour discuter des principaux points qui seront soulevés dans sa proposition spontanée.
27 juin 1990	Le ministre Lewis répond à la proposition d'Air Canada. Il doit consulter le Cabinet, mais s'engage à aller de l'avant aussi vite que possible.
Juil. 1990	Proposition spontanée de la Canadian Airports Limited pour la modernisation des aérogares 1 et 2.
1 ^{er} sept. 1990	Huguette Labelle devient sous-ministre des Transports. Glen Shortliffe est nommé secrétaire associé du Cabinet.
11 sept. 1990	Réunion du Comité directeur de l'Aéroport Pearson. Le ministre voudrait que la Demande de propositions soit lancée au plus tard en juillet 1991.
9 oct. 1990	Le ministre Lewis dépose le projet de loi C-85 (sur la cession des aéroports) qui définit les administrations aéroportuaires locales (AAL) et établit le processus de cession des aéroports à ces organismes. La Loi (adoptée en mars 1992) exige l'application de la <i>Loi sur les langues officielles</i> et du <i>Code canadien du travail</i> aux aéroports cédés et au personnel.
17 oct. 1990	Le ministre Lewis annonce que la participation du secteur privé à la modernisation des aérogares 1 et 2 sera sollicitée au moyen d'une Demande de propositions.
17 oct. 1990	Le Greater Toronto Area Airport Study Committee recommande de ne prendre aucune nouvelle mesure en vue de privatiser l'Aéroport Pearson.

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18 oct. 1990	Le ministre Lewis rencontre des représentants de Paxport et d'autres intéressés au sujet de la Demande de propositions et du processus d'analyse.
Nov. 1990	Transports Canada produit une «Stratégie pour le sud de l'Ontario».
26 nov. 1990	Ray Hession écrit à Huguette Labelle pour lui indiquer que des fonctionnaires de son ministère ne semblent pas prendre assez au sérieux la politique de privatisation, surtout depuis que la Greater Toronto Local Airport Authority fait pression pour obtenir une administration aéroportuaire locale pour l'Aéroport Pearson.
3 déc. 1990	Le directeur des services municipaux de Mississauga et président du Greater Toronto Local Airport Authority Technical Advisory Committee, D.A. Lychak, rédige une note de trois pages à l'intention du président du conseil municipal en vue de sa rencontre avec le ministre Lewis le 7 décembre. Il préconise la création d'un groupe de travail pour préparer le dossier de demande d'une administration aéroportuaire locale.
7 déc. 1990	Ouverture des locaux ajoutés, au coût de 40 millions, à la zone internationale de l'aérogare 2.
7 déc. 1990	Le ministre Lewis rencontre les ministres et les présidents de conseils municipaux de l'Ontario au sujet du réaménagement de l'Aéroport Pearson.
28 janv. 1991	Le chef de la direction d'Air Canada, Claude Taylor, fait remarquer que, comme elle formera 92 % de la clientèle de l'aérogare 2, sa compagnie devrait en être propriétaire.
15 fév. 1991	Le ministre des Transports de l'Ontario, Ed Philipps, écrit au ministre Lewis pour appuyer la création d'une administration aéroportuaire locale. Il y joint le document des présidents de conseils municipaux et indique des détails auxquels il faudrait s'attacher en particulier dans la Demande de propositions.
6 mars 1991	Doug Port d'Air Canada informe Ray Hession que la compagnie doit communiquer son Énoncé des exigences à Transports Canada avant le 1 ^{er} avril. Air Canada s'est fait dire par Transports Canada de ne pas profiter de l'occasion pour agir au nom d'un tiers. Air Canada adresse une lettre à Paxport pour mettre un terme à leur relation.
28 mars 1991	Le vice-président exécutif d'Air Canada, Léo Desrochers, écrit à Gerry Berigan pour faire valoir qu'Air Canada peut gérer les aérogares 1 et 2 sans discrimination à l'endroit des autres transporteurs.
4 avril 1991	Rencontre entre Air Canada et Transports Canada en vue d'obtenir des éléments pour le processus de la Demande de propositions.
15 avril 1991	Paxport est invité, avec d'autres proposants éventuels, à rencontrer Victor Bardeau, Gerry Berigan et Wayne Power.

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18 avril 1991	Ray Hession écrit au ministre Lewis pour tenter de concilier des arguments pour procéder à la Demande de propositions avec la nécessité d'attendre les résultats d'une étude environnementale sur la construction des pistes.
22 avril 1991	Jean Corbeil devient ministre des Transports.
9 mai 1991	Ray Hession écrit à Huguette Labelle au sujet de rumeurs selon lesquelles Air Canada collaborerait avec une administration aéroportuaire locale en vue de présenter une proposition pour la gestion et l'aménagement de l'Aéroport Pearson.
12 juin 1991	Ray Hession rencontre Glen Shortliffe, qui est maintenant secrétaire associé du Cabinet. Il demande si le Bureau du Conseil privé s'opposerait à ce que l'évaluation environnementale de l'aéroport soit dissociée de la Demande de propositions afin d'éviter de reporter celle-ci au-delà d'octobre. Glen Shortliffe répond qu'il ne s'y opposerait pas.
30 juil. 1991	Ed Philips (ministre des Transports de l'Ontario) écrit au ministre Corbeil pour lui recommander que seul l'aérogare 1 soit privatisé.
7 août 1991	Le ministre Corbeil rencontre la chambre de commerce de Toronto. Aucune décision n'a encore été prise au sujet des travaux de réaménagement ou de leur dissociation de l'évaluation environnementale.
26 août 1991	Léo Desrochers d'Air Canada écrit à Huguette Labelle en mentionnant que Transports Canada est sur le point de lancer la Demande de propositions. Il signale qu'Air Canada a proposé une solution de rechange qui répond, selon lui, aux objectifs de Transports Canada et demande qu'elle soit reconsidérée. Il rappelle en outre l'entente conclue en 1989 entre Glen Shortliffe et Denis Groom au sujet des principes directeurs sur lesquels repose le bail à long terme d'Air Canada. L'entente demeure en vigueur.
23 déc. 1991	La Canadian Airports Limited décide de se retirer du processus de soumissions pour l'Aéroport Pearson.
3 fév. 1992	Le ministre Corbeil demande à la Canadian Airports Limited de reconsidérer sa décision de se retirer du processus de soumissions.
20 fév. 1992	Le Conseil du Trésor approuve le lancement de la Demande de propositions pour le réaménagement de l'Aéroport Pearson.
Fév. 1992	Fin des travaux de rénovation des locaux de l'aérogare 2 réservés aux vols intérieurs et des installations de manutention des bagages en partance financés conjointement par Air Canada et Transports Canada au coût total de 112 millions.

Évaluation des propositions

16 mars 1992	Le ministère des Transports lance sa Demande de propositions et accorde aux intéressés jusqu'au 19 juin pour présenter des plans de réaménagement des aérogares 1 et 2.
7 avril 1992	Transports Canada organise à Toronto une séance d'information sur la Demande de propositions.
30 avril 1992	Transports Canada ajoute un addenda à la Demande de propositions concernant la capacité du parc de stationnement, les avantages industriels, le régime de pensions et d'autres questions.
Mai 1992	Ron Lane est retenu pour agir en tant que président du Comité d'évaluation des projets.
4 mai 1992	Le ministère passe un contrat avec Price Waterhouse pour l'aider à évaluer les propositions.
7 mai 1992	Ray Hession écrit au ministre Pouliot : «Il serait regrettable que votre gouvernement continue de privilégier l'idée de confier l'exploitation des terminaux à une seule firme».
21 mai 1992	Le Comité d'évaluation des projets, où figurent Price Waterhouse, Richardson Greenshields, Bobrow Eldon et d'autres consultants, se réunit.
22 mai 1992	Sid Valo écrit au ministre Corbeil pour faire état des progrès réalisés en vue de créer une administration aéroportuaire locale à Toronto.
27 mai 1992	Gerry Berigan produit des notes d'information sur chacune des propositions.
Juin 1992	La firme Raymond, Chabot, Martin, Paré est retenue pour la vérification comptable des propositions.
1 ^{er} juin 1992	La South Central Ontario Airports Authority s'enquiert de la possibilité d'une soumission conjointe avec Claridge. L'idée est par la suite abandonnée.
8 juin 1992	La date limite initiale (19 juin) de présentation des propositions pour le réaménagement des aérogares 1 et 2 est reportée au 13 juillet 1992 à la demande de Claridge. Paxport prétend que cela avantage ses concurrents.
17 juin 1992	Glen Shortliffe devient greffier du Conseil privé.
17 juin 1992	Séance d'information de Chern Heed, Wayne Power et d'autres hauts fonctionnaires du ministère des Transports sur les administrations aéroportuaires locales à l'intention de la Greater Toronto Local Airport Authority.
3 juil. 1992	L'inscription de Claridge au registre des proposants est modifiée; «Claridge» est remplacé par «Airport Terminal Development Group».
8 juil. 1992	Price Waterhouse communique à Wayne Power et à Transports Canada son évaluation des débouchés commerciaux liés au réaménagement des aérogares 1 et 2. Selon les hypothèses, leur valeur se situe entre 342 et 561 millions.

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13 juil. 1992	Trois groupes — Paxport, Airport Terminal Development Group et le groupe Morrison Hershfield — présentent des propositions. Celle de ce dernier ne répond toutefois pas aux exigences de base du processus et n'est pas retenue. (La firme a négligé de produire une lettre de crédit ou un cautionnement, et de s'inscrire avant de présenter sa proposition.)
24 juil. 1992	Les maires de la région du Grand Toronto tiennent une réunion et conviennent de représenter à leur conseil respectif une résolution d'appui à la Pearson Regional Airport Authority.
15 sept. 1992	Air Canada demande de reporter toute décision à l'égard des propositions reçues.
22 sept. 1992	Présentation d'un rapport aux présidents des conseils municipaux de la région du Grand Toronto sur la création d'une administration aéroportuaire locale pour la région.
Oct. 1992	Connie Edlund d'Industrie Canada est chargée d'un examen des propositions ciblé sur la viabilité financière.
7 oct. 1992	Alan Tonks transmet au ministre des Transports le rapport présenté le 22 septembre sur la création d'une administration aéroportuaire locale.
26 oct. 1992	La firme Raymond, Chabot, Martin, Paré transmet à Huguette Labelle son rapport sur la validation du processus d'évaluation du projet de réaménagement des aéroports 1 et 2.
6 nov. 1992	Le ministre des Transports demande à Alan Tonks ce que les divers conseils régionaux et municipaux pensent du rapport du groupe de travail sur la création d'une administration aéroportuaire locale à Toronto.
7 déc. 1992	Le ministère annonce que la meilleure proposition globale est celle de Paxport Inc.

Fusion de Paxport et Claridge et négociation de l'accord

7 déc. 1992	Lettre de Victor Barbeau à Paxport qui doit faire état de sa viabilité financière avant le 15 février 1993. L'échéance est par la suite reportée au 1 ^{er} mars.
15 déc. 1992	Ray Hession et Jack Matthews rencontrent Victor Barbeau et d'autres représentants de Transports Canada. La discussion porte sur la définition de la viabilité financière.
21 déc. 1992	Ray Hession et Jack Matthews rencontrent le ministre Corbeil après la sélection de leur proposition comme meilleure proposition globale pour réaménager et gérer les aéroports 1 et 2.
22 déc. 1992	Victor Barbeau écrit à Ray Hession au sujet de la viabilité financière. «Il n'est nullement dans notre intention de vous définir ce qui constituerait une preuve de capacité financière qui serait acceptable pour le gouvernement...»
Janv. 1993	Le sous-ministre associé des Transports, Ran Quail, est nommé négociateur en chef du gouvernement.

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7 janv. 1993	Rencontre entre Transports Canada et Paxport au sujet des questions de capacité financière.
14 janv. 1993	Entente entre l'Airport Terminal Development Group et Paxport précisant comment les deux groupes travailleront ensemble.
14 janv. 1993	Deloitte & Touche est retenu pour aider à évaluer la capacité de financement de la proposition.
20 janv. 1993	Chern Heed rédige une note pour la signature de Ran Quail sur le projet de fusion des deux proposants.
21 janv. 1993	Production d'un document sur les enjeux et inquiétudes soulevés par le projet de réaménagement des aéroports pour Wayne Powers.
27 janv. 1993	Ran Quail met William Rowat du Bureau du Conseil privé au courant de la proposition de fusion entre l'Airport Terminal Development Group et Paxport. Rowat rédige une note de service à l'intention de Glen Shortliffe.
28 janv. 1993	Établissement d'une liste de questions à soulever lors de la réunion initiale avec Paxport après la fusion.
28 janv. 1993	Rencontre entre des représentants de Wood Gundy, Paxport et des fonctionnaires des Transports au sujet de la capacité de financement.
1 ^{er} fév. 1993	Paxport et l'Airport Terminal Development Group annoncent une co-entreprise appelée T1/T2 Limited Partnership qui deviendra par la suite Mergeco et plus tard la Pearson Development Corporation. Le nom de tous les associés et la participation envisagée par chacun sont énoncés.
3 fév. 1993	Glen Shortliffe envoie une note au premier ministre pour faire le point sur la proposition conjointe de l'Airport Terminal Development Group et de Paxport en vue du réaménagement des aéroports 1 et 2.
11 fév. 1993	Deux fonctionnaires des Transports (Michael Farquhar et Chern Heed) mettent la Greater Toronto Regional Airport Authority au courant du processus de cession des aéroports et des 36 principes supplémentaires.
12 fév. 1993	Ran Quail annonce qu'il est nommé sous-ministre des Travaux publics et qu'il faudra désigner un nouveau négociateur en chef. Une lettre prolongeant l'échéance pour faire la preuve de la capacité de financement est adressée à Jack Matthews.
17 fév. 1993	La ville de Mississauga adopte une résolution appuyant la création d'une administration aéroportuaire locale.
18 fév. 1993	Annonce de la décision du gouvernement de donner suite aux projets de construction de pistes à l'Aéroport international Pearson.
19 fév. 1993	William Rowat met à jour la note sur le réaménagement à l'intention de Glen Shortliffe. «Les perspectives de conclure un accord ne semblent pas bonnes».

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19 fév. 1993	Victor Barbeau remplace brièvement Ran Quail comme négociateur en chef.
22 fév. 1993	Dans une étude sur la capacité de financement du groupe Paxport, Deloitte & Touche estime que les participants peuvent recueillir environ 58 millions.
26 fév. 1993	Jack Matthews écrit à Huguette Labelle en indiquant que Paxport a fourni toutes les preuves nécessaires de sa capacité de financement et demande que les négociations s'amorcent immédiatement.
3 mars 1993	Paxport rejette l'opinion de Deloitte & Touche concernant sa capacité de financement.
3 mars 1993	Un protocole d'entente entre Allders et Paxport fait état d'un prêt de 29 millions à Paxport.
9 mars 1993	Le président intérimaire de la Greater Toronto Regional Airport Authority, Gerry Meinzer, écrit au ministre Corbeil pour l'informer de la création d'une administration aéroportuaire régionale, en train d'être constituée, et lui demande de l'endosser officiellement.
12 mars 1993	Mel Cappe, du Conseil du Trésor, met le sous-ministre, Ian Clark, au courant de l'état des négociations. Il fait remarquer que Paxport se plaint de ce qu'il perçoit comme des «retards bureaucratiques».
15 mars 1993	Dans une lettre au ministre Corbeil, Jack Matthews se plaint des retards et demande de fixer l'aboutissement des négociations au 15 mai 1993.
19 mars 1993	David Broadbent est nommé expert-conseil et négociateur en chef.
22 mars 1993	Note de Glen Shortliffe au premier ministre pour le mettre au courant de l'évolution du dossier.
23 mars 1993	David Broadbent rencontre Jack Matthews, Peter Coughlin et d'autres en vue d'établir un plan de travail et d'envisager une façon de traiter avec Air Canada.
26 mars 1993	Réunion de David Broadbent, Keith Joliffe, de deux avocats de la Justice, Jack Matthews et Peter Coughlin pour discuter de modalités de négociation. Un document sur les «points d'achoppement et enjeux» leur est distribué.
30 mars 1993	Glen Shortliffe et Dave Broadbent rencontrent Peter Coughlin et Charles Bronfman pour discuter de divers aspects du marché. Jack Matthews, Peter Coughlin et d'autres rencontrent David Broadbent pour discuter plus à fond des points d'achoppement et d'autres enjeux.
31 mars 1993	Dave Broadbent propose un plan de travail pour les négociations.
2 avril 1993	Réunion de sous-ministres pour examiner le dossier des aérogares 1 et 2 qu'ils traitent de «beau boubier».
5 avril 1993	Les équipes de négociation de la Pearson Development Corporation et de Transports Canada se réunissent pour établir un calendrier de travail.

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7 avril 1993	Note de Glen Shortliffe au premier ministre au sujet des incertitudes persistantes concernant la fusion. La date limite pour conclure un marché est fixée au 1 ^{er} juin.
12 avril 1993	Ellis Don se retire; Wood Gundy Capital se retire du groupe Paxport en alléguant que le taux de rendement est insuffisant.
21 avril 1993	Le ministre des Transports de l'Ontario, Gilles Pouliot, écrit à Gerry Meinzer pour endosser la Greater Toronto Regional Airport Authority et le prier de résoudre les problèmes qui persistent entre les cinq administrations locales.
21 avril 1993	Le Plan de gestion et d'exploitation proposé par Transports Canada est transmis à Paxport.
28 avril 1993	Résumé des structures et modalités de partenariat entre le groupe Paxport et l'Air Terminal Development Group.
3 mai 1993	Le nouveau président de la Greater Toronto Regional Airport Authority, Robert Bandeen, écrit au ministre des Transports pour lui demander d'amorcer des négociations sur la cession de l'Aéroport Pearson à cet organisme. Il demande à rencontrer le ministre.
mai 1993	Peter Coughlin et Jack Matthews signent un accord créant la Pearson Development Corporation. Jack Matthews présente un plan de gestion et d'exploitation. L'Air Terminal Development Group signifie par lettre qu'elle retire sa proposition et demande à récupérer son cautionnement.
4 mai 1993	Annnonce du début des négociations.
5 mai 1993	Le plan présenté par la Pearson Development Corporation contient des changements par rapport à la proposition initiale de Paxport.
5 mai 1993	Début de la construction de la piste nord-sud à l'Aéroport Pearson.
6 mai 1993	Le ministre Corbeil demande à Gerry Meinzer de résoudre les nombreuses questions que les résolutions des administrations locales et régionales laissent en suspens.
11 mai 1993	Jack Matthews écrit au ministre Corbeil au sujet du processus relatif aux aérogares 1 et 2. Une réponse lui est adressée le 28 juin.
12 mai 1993	Trevor Carnahoff produit un énoncé de principes sur le Plan révisé d'aménagement des aérogares par rapport au Plan d'aménagement initial. Wayne Power et Chern Heed s'opposent à toute garantie du volume de passagers.
13 mai 1993	Note de David Broadbent sur «les points critiques et l'intendance».
13 mai 1993	Steven Shaw de la Greater Toronto Regional Airport Authority écrit à Michael Farquhar de Transports Canada pour l'informer de la révision des règles générales de fonctionnement et du processus de nomination pour les rendre acceptables au gouvernement fédéral.

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13 mai 1993	Le ministre Corbeil rencontre le président, Robert Bandeen, et la vice-présidente, Anne Edgar, de la Greater Toronto Regional Airport Authority. Il est convenu de fournir au ministre les résolutions sans équivoque requises des administrations locales et régionales qui témoignent d'un appui sans réserve.
13 mai 1993	La région de Peel s'oppose vivement à la cession de l'Aéroport Pearson sans englober l'aéroport de Toronto Island.
17 mai 1993	Nouvelle note de Dave Broadbent au sujet des enjeux critiques des négociations concernant les aérogares 1 et 2.
18 mai 1993	Jack Matthews et Peter Coughlin écrivent à Dave Broadbent au sujet des problèmes-clés à résoudre. Réponse de Broadbent. Contre-proposition de la Pearson Development Corporation.
20 mai 1993	Dave Broadbent répond à la contre-proposition de la Pearson Development Corporation.
25 mai 1993	Détails des modalités entre Allders et la Pearson Development Corporation. Air Canada énonce les modalités de paiement proposées dans une lettre adressée à Chern Heed. Ces modalités sont acceptées, moyennant quelques changements, par Transports Canada le 31 mai et par Air Canada le 4 juin.
27 mai 1993	La sous-ministre des Transports, Huguette Labelle, demande à Victor Barbeau de quitter le ministère pour quatre ou cinq semaines parce qu'il est perçu comme faisant obstruction au dossier de privatisation.
31 mai 1993	La Pearson Development Corporation demande à Dave Broadbent de conclure une entente et de nommer des arbitres pour régler les questions en suspens.
8 juin 1993	Dave Broadbent énonce la position de l'État sur certaines questions en négociation. Projet de politique de tarification pour les aérogares 1 et 2 et réaction des fonctionnaires des Transports.
14 juin 1993	Note de William Rowat à Glen Shortliffe au sujet de la stratégie relative au bail d'Air Canada, y compris l'accord avec la Pearson Development Corporation sur les droits d'accès des aéronefs pour le réaménagement de l'aérogare 2 et l'indemnisation d'Air Canada à la valeur non amortie des améliorations apportées à l'aérogare 2.
15 juin 1993	Réunion de sous-ministres pour discuter du projet des aérogares 1 et 2 et du départ de Dave Broadbent.
15 juin 1993	William Rowat passe du Bureau du Conseil privé au ministère des Transports où il devient sous-ministre associé et assume la responsabilité des négociations concernant l'Aéroport Pearson.
15 juin 1993	Robert Bandeen écrit au ministre Corbeil en joignant la résolution des administrations locales et régionales et lui demandant de l'endosser officiellement afin d'amorcer de toute urgence les négociations sur la cession de l'aéroport.

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- 16 juin 1993 Dans une lettre adressée à Air Canada et aux associés de la Pearson Development Corporation, Huguette Labelle reconnaît qu'Air Canada pourrait avoir un bail de 20 ans et deux options de 10 ans.
- 18 juin 1993 Huguette Labelle, au nom du ministre des Transports, et la Pearson Development Corporation signent une lettre d'entente qui n'est pas exécutoire. «Les parties s'efforceront, dans toute la mesure raisonnable, de finaliser tous les documents au plus tard le 15 juillet 1993.»
- 25 juin 1993 Kim Campbell succède à Brian Mulroney au poste de premier ministre.
- 25 juin 1993 Jocelyn Bourgon devient sous-ministre des Transports. Huguette Labelle passe à l'Agence canadienne de développement international.
- 28 juin 1993 Alan Tonks écrit au ministre Corbeil pour lui demander d'appuyer l'administration aéroportuaire locale.
- Juin/Juil. 1993 La Pearson Development Corporation rencontre Air Canada et William Rowat.
- Juil. 1993 Peat Marwick établit des États du revenu et des dépenses de l'aéroport pour l'année terminée le 31 mars 1992.
- 3 juil. 1993 Victor Barbeau réintègre son poste de sous-ministre adjoint.
- 7 juil. 1993 Victor Barbeau produit un document de fond sur les cessions d'aéroports et la Toronto Local Airport Authority à l'intention de Jocelyn Bourgon.
- 7 juil. 1993 Jacques Pigeon transmet à Robert Vineberg les dispositions du bail foncier concernant les détenteurs d'hypothèques sur propriétés louées à bail.
- 8 juil. 1993 Le ministre Corbeil rencontre Robert Bandeen au sujet du besoin d'avoir des résolutions inconditionnelles des administrations locales et régionales qui endossent la Greater Toronto Regional Airport Authority.
- 8 juil. 1993 Jack Matthews et Peter Coughlin rencontrent le ministre Corbeil pour passer en revue la direction que prennent les négociations en cours, surtout au sujet du bail d'Air Canada. Selon eux, les négociations avec Air Canada en sont au point mort parce que le statu quo favorise la compagnie aérienne. Ils demandent au ministre de conclure le marché qui fera de la Pearson Development Corporation le locateur afin de faciliter la signature d'une entente avec Air Canada. William Rowat rédige une note d'information à l'intention du ministre pour lui permettre de régler cette question, entre autres.
- 9 juil. 1993 Le ministre des Transports rencontre la mairesse de Mississauga concernant la nécessité d'une résolution d'appui inconditionnel à la Greater Toronto Regional Airport Authority sans exiger la cession subséquente de l'aéroport de Toronto Island, mais sans nécessairement en exclure la possibilité.

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13 juil. 1993	William Rowat informe la Pearson Development Corporation que le ministre voudrait que les dispositions relatives aux hypothèques sur propriétés louées à bail respectent les principes de l'administration aéroportuaire locale. Will Lipson de Peat Marwick communique à Norman Spencer une analyse des principes directeurs du contrat de location d'Air Canada.
14 juil. 1993	Note sur les «scénarios cauchemardesques» advenant qu'Air Canada et la Pearson Development Corporation n'arrivent pas à s'entendre.
16 juil. 1993	Will Lipson de Peat Marwick transmet à Norman Spencer une analyse du bail foncier de l'Aéroport Pearson.
21 juil. 1993	La Pearson Development Corporation et Air Canada s'entendent en principe sur un bail de 37 ans à la signature de l'accord.
27 juil. 1993	William Rowat demande à la Pearson Development Corporation d'accepter une réduction des baux des lignes aériennes de 15 % et de partager 10 % du revenu net avec elles. Wayne Power fait le point sur les négociations dans une note.
Août 1993	Claridge acquiert encore 15 % de la Pearson Development Corporation.
3 août 1993	Le Comité des opérations du Cabinet se réunit pour discuter du réaménagement des aérogares 1 et 2 de l'Aéroport Pearson.
4 août 1993	Demande de propositions pour l'aménagement et l'exploitation des pistes, financement, conception et construction compris.
10 août 1993	Note de William Rowat exposant les étapes à franchir avant de signer un accord. La date de clôture probable est la fin de septembre.
11 août 1993	Le ministre Corbeil demande à la mairesse Hazel McCallion de Mississauga de produire une résolution d'appui inconditionnel. Il écrit également à Robert Bandeen à ce sujet.
17 août 1993	Deloitte & Touche communique à William Rowat un avis sur la capacité de financement de la Pearson Development Corporation.
18 août 1993	Robert Bandeen écrit au ministre Corbeil pour demander que le gouvernement fédéral endosse officiellement la Greater Toronto Regional Airport Authority sans exiger une nouvelle résolution de la ville de Mississauga.
27 août 1993	Un décret autorise le gouvernement à conclure un accord de location des aérogares 1 et 2.
30 août 1993	Le ministre Corbeil annonce la conclusion d'une entente avec la Pearson Development Corporation pour le réaménagement et l'exploitation des aérogares 1 et 2.
8 sept. 1993	Déclenchement de l'élection fédérale.
13 sept. 1993	Rencontre entre des fonctionnaires fédéraux et un fonctionnaire du ministère des Transports de l'Ontario.

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21 sept. 1993	L'Office national des transports décide que la cession des opérations et de la gestion de l'Aéroport Pearson n'est pas assujettie à la Partie VII de la <i>Loi sur les transports nationaux</i> .
21 sept. 1993	Lettre entre Air Canada et le gouvernement pour confirmer la conclusion d'une entente entre Air Canada et la Pearson Development Corporation. Le loyer foncier d'Air Canada sera différé dans une proportion de 15 %. L'entente est approuvée par le conseil d'administration d'Air Canada le 24 septembre.
25 sept. 1993	L' <i>Ottawa Citizen</i> publie un article dans lequel Greg Weston critique l'accord Pearson. Un nouvel article paraît le 26 septembre.
27 sept. 1993	William Rowat rédige une réplique aux articles parus dans l' <i>Ottawa Citizen</i> .
1 ^{er} oct. 1993	Décision préalable du Bureau de la politique de concurrence. Motifs insuffisants pour aller devant le Tribunal de la concurrence.
4 oct. 1993	La Pearson Development Corporation convient de verser à Matthews Investments Inc. des honoraires d'experts-conseils de 350 000 \$ par an pendant dix ans payables mensuellement à compter du 31 oct. 1993.
5 oct. 1993	Le ministre des Transports de l'Ontario, Gilles Pouliot, écrit au ministre Corbeil pour demander à Ottawa de surseoir à l'accord final.
6 oct. 1993	L'Economic Development and Planning Committee de la communauté urbaine de Toronto recommande au gouvernement fédéral de ne pas procéder à la privatisation des aérogares et des pistes de l'Aéroport Pearson tant qu'une administration aéroportuaire locale n'aura pas eu l'occasion de participer aux décisions.
7 oct. 1993	William Rowat reçoit une directive écrite de Jocelyn Bourgon indiquant que le premier ministre l'enjoint de signer les documents juridiques qui restent le 7 octobre 1993.
18 oct. 1993	La ville de Toronto transmet une motion demandant au gouvernement du Canada de revenir sur sa décision concernant la privatisation pour permettre d'approfondir la question.
25 oct. 1993	Élection fédérale.
26 oct. 1993	La T1/T2LP accepte de reporter la date de commencement des travaux au 15 décembre 1993.
26 oct. 1993	John Desmarais produit un document sur les options de réaménagement.
28 oct. 1993	Paul Stehelin de Deloitte & Touche écrit à Keith Joliffe de Transports Canada pour lui présenter une estimation du coût d'annulation (entre 615 et 1 330 millions).

Annulation de l'accord

27 oct. 1993	Jean Chrétien téléphone à Robert Nixon pour lui demander d'analyser le contrat de l'Aéroport Pearson.
28 oct. 1993	Robert Nixon rencontre Jean Chrétien et Ed Goldenberg qui lui demandent de faire enquête sur l'Accord de l'Aéroport Pearson. La firme Crosbie and Co. est également retenue.
29 oct. 1993	William Rowat transmet un document intitulé «Privatisation des aéroports 1 et 2» à Robert Nixon par télécopieur. Le député de Hamilton-Ouest, Stan Keyes, écrit à M. Nixon pour lui faire part des inquiétudes que lui inspire l'exclusion des aménagements côté piste dans un rayon de 70 kilomètres de l'Aéroport Pearson.
29 oct. 1993	Robert Nixon rencontre Stephen Goudge et Brad Wilson.
31 oct. 1993	Robert Nixon et Stephen Goudge rencontrent Gardner Church.
1 ^{er} nov. 1993	Robert Nixon rencontre Hazel McCallion, William Rowat, John Desmarais et Wayne Power.
1 ^{er} nov. 1993	Morris Rosenberg rédige une note au sujet du contrat de M. Nixon à l'intention de Glen Shortliffe.
1 ^{er} nov. 1993	Transports Canada transmet 17 documents du gouvernement à Robert Nixon, dont trois présentations au Conseil du Trésor.
1 ^{er} nov. 1993	Date initiale de cession des aéroports 1 et 2 à la Pearson Development Corporation. Glen Shortliffe demande aux parties d'accepter un délai de 45 jours pour donner le temps au nouveau gouvernement d'examiner l'accord.
2 nov. 1993	Robert Nixon rencontre Alan Tonks qui l'incite à reconnaître la Greater Toronto Regional Airport Authority.
2 nov. 1993	Robert Nixon rencontre le Council of Concerned Residents. Wayne Power lui envoie les documents de clôture qui ont été rendus publics et le Plan d'entreprise de Paxport. Stephen Goudge demande à William Rowat de donner un avis juridique sur l'existence d'un accord exécutoire avec le gouvernement fédéral à la date du 7 octobre.
3 nov. 1993	Robert Nixon rencontre Peter Coughlin et des représentants de la Pearson Development Corporation, la chambre de commerce de Mississauga et Huguette Labelle.
4 nov. 1993	Robert Nixon rencontre Robert Bandeen et les membres de l'administration aéroportuaire locale. Il rencontre également le premier ministre de l'Ontario, Bob Rae, et le ministre des Transports, Gilles Pouliot.
4 nov. 1993	Le nouveau Cabinet est assermenté. Doug Young devient ministre des Transports.

Annexe B - Chronologie

4 nov. 1993	Le ministère des Transports produit une version révisée et élargie de la note d'information du 29 octobre.
5 nov. 1993	Gordon Dixon de Cassels Brock communique à Stephen Goudge des extraits des divers accords qu'ils jugent les plus pertinents à l'enquête.
5 nov. 1993	Robert Nixon rencontre Peter Kozicz et Jack Matthews du groupe Paxport.
8 nov. 1993	Robert Nixon rencontre les représentants de Crosbie and Co. Ceux-ci lui remettent un projet de plan de travail et d'échéancier pour le Rapport.
9 nov. 1993	Wayne Power envoie à Stephen Goudge une liste des documents qui n'ont pas été rendus publics pour des raisons de confidentialité. Robert Vineberg transmet à Stephen Goudge une brochure résumant les divers accords.
10 nov. 1993	Le conseil municipal de Mississauga adopte une résolution incitant Robert Nixon à tenir des audiences publiques sur le projet d'expansion des pistes.
10 nov. 1993	Robert Nixon rencontre les représentants du groupe Morrison Hershfield.
11 nov. 1993	Une liste des honoraires versés à des experts-conseils par Claridge est transmise à Stephen Goudge.
12 nov. 1993	Chern Heed communique à Robert Nixon des données financières sur l'Aéroport international Pearson. Laurie Barrett de Osler, Hoskin and Harcourt lui communique une copie du bail foncier et d'autres documents relatifs à l'Aéroport international de Vancouver.
15 nov. 1993	Robert Nixon demande à Transports Canada de lui fournir de l'information sur l'exploitation des aéroports 1 et 2. John Desmarais répond le 22 novembre.
17 nov. 1993	Robert Nixon rencontre les membres de la chambre de commerce de Toronto.
18 nov. 1993	Le gouvernement de l'Ontario critique divers aspects du bail de l'Aéroport Pearson dans sa présentation au Comité Nixon.
18 nov. 1993	Crosbie and Co. produit une Étude de l'Aéroport international Pearson à l'intention de Robert Nixon. Ils y concluent que le taux de rendement interne pour les investisseurs aux aéroports 1 et 2 serait d'environ 14 % (soit 23 % avant impôts).
18 nov. 1993	Crosbie, Nixon et Goudge se rencontrent pour décider de la position finale et des documents d'accompagnement du rapport final.
25 nov. 1993	Le directeur de l'Aéroport de Toronto, Chern Heed, accepte le poste de directeur commercial à l'administration aéroportuaire de Hong Kong.
26 nov. 1993	Nouvelle étude de Crosbie and Co. sur le taux de rendement.
29 nov. 1993	Le rapport est transmis à Jean Chrétien sous couvert d'une lettre de Robert Nixon.
3 déc. 1993	Publication du Rapport Nixon et communiqué de presse.

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11 déc. 1993	Dans une lettre au <i>Ottawa Citizen</i> , Ray Hession demande que le vérificateur général fasse enquête pour disculper les gens d'affaires dont la réputation est ternie par l'annulation.
13 déc. 1993	En réponse au ministre Young qui demande de reporter encore la date de commencement au 30 janvier, la T1/T2LP déclare que c'est inacceptable à moins que le gouvernement accepte dès maintenant de maintenir l'accord.
14 déc. 1994	Le ministre Young demande à la T1/T2LP d'abandonner ses intérêts dans le bail et de rétrocéder les locaux à Sa Majesté «sans préjudice».
15 déc. 1993	Date prévue de la cession des aéroports 1 et 2 à la Pearson Development Corporation (avant l'annulation de l'accord).
15 déc. 1993	Robert Vineberg écrit à Stephen Goudge pour lui signaler des erreurs dans le Rapport Nixon.
Fév. 1994	La Banque Royale réclame la mise sous séquestre du groupe Matthews et de Matthews Construction.
Mars 1994	Robert Nixon est nommé président d'Énergie atomique du Canada Ltée.
Avril 1994	Rupture des négociations sur le dédommagement de la Pearson Development Corporation qui réclame environ 200 millions, manque à gagner et frais de lobbying compris. Les dépenses engagées sont de l'ordre de 30 à 40 millions.
13 avril 1994	Première lecture du projet de loi C-22 à la Chambre.
9 mai 1994	Nick Mulder est nommé sous-ministre des Transports.
26 mai 1994	Le Comité permanent des transports de la Chambre des communes entend Ray Hession et Robert Vineberg.
31 mai 1994	Le Comité permanent des transports de la Chambre entend des représentants d'Air Canada, Donald Matthews et Douglas Young.
9 juin 1994	Le Comité permanent des transports entend John Desmarais et Jacques Pigeon.
9 juin 1994	Le porte-parole du Parti réformiste pour le transport, Jim Gouk, propose des amendements au projet de loi C-22 qui permettraient au Comité permanent des transports d'examiner toutes les demandes de dédommagement et de formuler des recommandations.
6 juil. 1994	Le Comité sénatorial des affaires juridiques et constitutionnelles recommande d'accorder un dédommagement complet jusqu'au 13 avril 1994.
13 juil. 1994	Publication de la nouvelle Politique nationale sur les aéroports qui propose, entre autres, de créer des administrations aéroportuaires canadiennes dont des membres seraient nommés par le gouvernement fédéral.
16 sept. 1994	Neuf membres de la Pearson Development Corporation intentent des poursuites pour bris de contrat.

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1 ^{er} nov. 1994	William Dimma et Joanne Yaccato sont désignés comme représentants fédéraux à l'Administration aéroportuaire canadienne de Pearson.
2 déc. 1994	Le ministre Young et Robert Bandeen, signent une lettre d'intention sur la cession de l'Aéroport Pearson à une administration aéroportuaire sans but lucratif.
8 déc. 1994	À la Chambre des communes, le premier ministre Chrétien nie avoir discuté de la proposition relative à l'Aéroport Pearson avec Jack Matthews pendant qu'il faisait partie du cabinet d'avocats Lang, Michener.
30 janv. 1995	La Pearson Development Corporation obtient, en Cour de l'Ontario (Division générale), le droit de poursuivre le gouvernement fédéral.
27 mars 1994	Jocelyne Bourgon devient greffier du Conseil privé.
28 mars 1995	Dépôt du Rapport Baker devant le Comité sénatorial des affaires juridiques et constitutionnelles sur le projet de loi C-22.
4 mai 1995	Le Sénat adopte une motion créant un comité spécial.
23 mai 1995	La Cour d'appel de l'Ontario rejette l'appel interjeté par le gouvernement de la décision d'un tribunal inférieur lui imputant la responsabilité de l'annulation des contrats.
11 juil. 1995	Début des audiences du Comité spécial du Sénat.
Déc. 1995	Rapport du Comité spécial du Sénat.

Annexe C - Notices biographiques sur les Accords sur l'aéroport Pearson

AGRA Industries Limited. Société internationale oeuvrant principalement dans deux secteurs : ingénierie et technologie et récupération et recyclage des ressources. William Pearson, président.

Airport Development Corporation. Société choisie par le gouvernement comme promoteur privilégié pour construire et exploiter l'aérogare 3 à l'aéroport Pearson. Inclut Huang & Danczkay Properties et Lockheed Air Terminals, de même que Scott and Associates, Marshall Macklin Monaghan, Murray and Co.

Airport Terminal Development Group Inc. Société en commandite de l'Ontario. Peter Coughlin, président; Norman Spencer, vice-président. L'un des deux groupes (l'autre étant Paxport) dont la proposition a été étudiée par le Comité d'évaluation des propositions. Une propriété exclusive de Toronto Airport Terminals Investors Inc., société contrôlée conjointement par Charles R. Bronfman et la fiducie Charles R. Bronfman.

Alders International. Exploite des boutiques hors taxe dans 13 aéroports canadiens, y compris l'aérogare 3. Appartient à AGRA Industries Limited. Scott McMaster, président (Canada).

***Baker, Gordon R.** Conseiller juridique de Matthews Investments et du groupe Paxport durant les négociations avec Claridge. Membre du conseil d'administration et du comité de gestion de la Pearson Development Corporation. A préparé le mémoire présenté au Comité des transports de la Chambre des communes le 31 mai 1994 et au Comité sénatorial des affaires juridiques et constitutionnelles, le 28 mars 1995.

***Bandeem, Robert.** Ancien président du Canadien national. Directeur de la Greater Toronto Regional Airport Authority. Souhaiterait prendre le contrôle de l'aéroport Pearson et le gérer comme une AAL.

***Barbeau, Victor.** Sous-ministre adjoint responsable des aéroports à Transports Canada.

***Berigan, Gerry.** Agent de planification de projets spéciaux à Transports Canada.

Bouchard, Benoît. Ministre des Transports d'avril 1988 au 23 février 1990.

***Bourgon, Jocelyne.** Sous-ministre des Transports en 1993-1994. Greffier du Conseil privé depuis 1994.

Bracknell Corp. Entreprise de construction. George Ploder, président.

***Broadbent, David.** Invité par H. Labelle à prendre la direction du projet en mars 1993, a quitté en juillet 1993.

Bronfman, Charles. Homme d'affaires québécois. Claridge Investments.

Campbell, Kim. Premier ministre au moment où l'accord sur l'aéroport Pearson a été signé.

Canadian Airports Limited. Englobait Ellis-Don Construction, Zeidler Roberts, La Confédération, Compagnie d'assurance-vie, la Banque Toronto Dominion, Cogan Corp. et British Airport Authority. A fait une proposition spontanée, qui n'a pas été retenue, en vue de la privatisation de Pearson.

Cassels, Brock & Blackwell. Leurs services ont été retenus pour conseiller le ministère des Transports durant les négociations.

Annexe C - Notices biographiques sur les Accords sur l'aéroport Pearson

Chrétien, Jean. Elu chef du Parti Libéral en juin 1990. Il est devenu Premier ministre en novembre 1993.

***Church, Gardner.** Ancien sous-ministre du gouvernement de l'Ontario.

CIBC Wood Gundy Capital Inc. Coentreprise créée en 1989 par la Banque canadienne impériale de Commerce et sa filiale à 67 % Wood Gundy Inc. Ancien partenaire de Paxport

Claridge Properties Ltd. Concurrent de Paxport, devenu ensuite un partenaire. Composé de la fiducie Charles R. Bronfman et de la Lockheed Corporation ou de leurs compagnies liées. Offre rejetée lors de la demande initiale de propositions. A par la suite fusionné avec Paxport pour former la Pearson Development Corporation.

***Clayton, Al.** Directeur exécutif. Bureau des biens immobiliers et du matériel. Conseil du Trésor.

***Corbeil, Jean.** Ministre des Transports du 22 avril 1991 au 4 novembre 1993.

***Coughlin, Peter.** Président de Claridge. Directeur général de la Pearson Development Corporation. Président et directeur général de plusieurs autres compagnies affiliées.

Crosbie, John. Ancien ministre des Transports.

***Crosbie, Allan.** Conseiller financier engagé par Robert Nixon

Deloitte & Touche Inc. Le ministère des Transports a retenu leurs services pour évaluer la capacité de financement de Paxport. Selon son rapport, la valeur pour l'Etat de la proposition de Paxport était de 800 millions de dollars.

***Desmarais, John.** Conseiller principal, Opérations, Groupe des aéroports, ministère des Transports. L'un des principaux négociateurs des contrats de l'aéroport. A aussi participé à la préparation de la Demande de propositions et à l'évaluation des propositions soumises.

***Dickson, D.G.** Directeur général, Politique et opérations financières, Transports Canada

***Doucet, Fred.** Lobbyiste pour Paxport.

***Douglas, Austin.** Ancien directeur exécutif associé, Transports Canada

***Edlund, Constance.** Directrice intérimaire, Administration des prêts aux petites entreprises, Industrie Canada. Elle a effectué une évaluation de la proposition de Paxport pour le ministre de l'Industrie.

Ellis-Don Inc. Importante entreprise de construction canadienne fondée en 1951. Partenaire de Paxport jusqu'à son retrait. Donald J. Smith, président et directeur général au moment de l'association avec Paxport.

***Farquhar, Michael.** Directeur général, Cessions d'aéroports, Transports Canada

***Fiore, Dominic.** Directeur des Biens immobiliers pour Air Canada au moment de l'entente.

***Fox, William.** Lobbyiste pour Claridge.

Annexe C - Notices biographiques sur les Accords sur l'aéroport Pearson

***Goudge, Stephen.** Conseiller juridique de Robert Nixon dans l'enquête sur Pearson.

***Green, Robert.** Avocat du ministère de la Justice invité par David Broadbent à se joindre à l'équipe de négociation au ministère des Transports.

***Harrema, Gary.** Président, municipalité régionale de Durham.

Heed, Chern. Ancien gérant général de l'aéroport Pearson.

***Hession, Raymond.** Président de Paxport au moment où a été faite la proposition qui a été retenue pour l'aménagement et la gestion des aérogares 1 et 2. Actuellement directeur général d'Hession, Neville and Associates.

Huang, Michael. Homme d'affaires de Toronto et partenaire de Bela Danckzkay au sein d'un consortium créé pour la construction de l'aérogare 3.

Jelinek, Otto. Ancien ministre du Revenu. Plus tard employé par Matthews Middle East and Asia Inc.

Jeannot, Pierre. Ancien président d'Air Canada

***Joliffe, Keith.** Conseiller financier, Groupe de l'aviation. A travaillé avec divers négociateurs de Transports Canada.

***Kozicz, Peter.** Vice-président directeur de Pearson Development Corporation.

***L'Abbé, Robert.** Membre de la firme comptables Raymond, Chabot, Martin, Paré engagé pour surveiller le processus d'évaluation des propositions.

***Labelle, Huguette.** Sous-ministre des Transports de 1990 à 1993.

***Lane, Ron.** Ancien président du comité d'évaluation.

Legate, John. Lobbyiste pour Paxport.

LeLay, Richard. Chef de cabinet du ministre des Transports, Jean Corbeil.

***Lewis, Doug.** Ministre des Transports du 23 février 1990 au 22 avril 1991.

LAH Ltd (744221 Ontario Inc). Créée le 12 novembre 1987. Filiale en propriété exclusive de Lockheed Air Terminals Inc. (Delaware) dont la totalité des actions appartiennent à la Lockheed Corporation (Delaware). Était un partenaire d'ATDG au moment de la proposition pour le projet des aérogares T1 et T2. Dirigeants : Jerry Cance, Robert Shirriff, secrétaire adjoint.

Martin, Shirley. Ancienne secrétaire parlementaire du ministre des Transports.

Matthews Group Limited. Créée à London (Ontario) en 1953 et devenue depuis une entreprise de développement internationale. Partenaire principal de Paxport, qui a fait la meilleure proposition globale.

Annexe C - Notices biographiques sur les Accords sur l'aéroport Pearson

***Matthews, Donald.** Cofondateur, président et directeur général de Paxport Inc. et président et directeur général de Matthews Group Limited.

***Matthews, Jack.** Directeur général de Paxport, qui a remplacé Ray Hession après que le contrat pour l'aéroport Pearson a été adjugé à Paxport. A négocié la fusion avec Claridge pour créer la Pearson Development Corporation.

Mazankowski, Don. Ministre des Transports du 17 septembre 1984 à avril 1988.

***McCallion, Hazel.** Maire de Mississauga.

McMaster, Scott. Directeur de la Pearson Development Corporation, directeur général d'Alders International Canada Ltd, et porte-parole du groupe réclamant une indemnisation.

***Meizner, Gerald.** Ancien président intérimaire, Greater Toronto Regional Airport Authority.

Mergeco. Partenariat formé par le groupe Claridge et le groupe Paxport pour les aérogares 1, 2 et 3. A par la suite pris le nom de Pearson Development Corporation.

***Metcalf, Herb.** Organisateur et agent de financement du Parti libéral. Lobbyiste principal pour Claridge Properties.

***Mulder, Nick.** Sous-ministre des Transports depuis septembre 1994.

Mulroney, Brian. Premier ministre du Canada de 1984 à juin 1993.

***Near, Harry.** Lobbyiste pour Claridge.

***Neville, William.** Lobbyiste recruté par Paxport.

***Nixon, Robert.** A préparé le rapport sur l'entente de l'aéroport Pearson.

NORR Partnership Limited. Société d'architecture et de génie. Sa filiale, NORR Airport Planning Associates, a été chef de projet pour 50 projets aéroportuaires, dont les rénovations de l'aérogare 2.

***Pascoe, Andrew.** Lobbyiste pour Paxport

Paxport Inc. Consortium composé de Matthews Investment (32 %), de CIBC/Wood Gundy (13 %), d'Alders (13 %), de Bracknell (13 %), de MGL, d'Agra, de NORR, de Sunquest et d'autres compagnies affiliées.

Pearson Development Corporation (1032156 Ontario Inc). Créée le 3 juin 1993. Devait être l'associé directeur général responsable de la société en nom collectif formée par le groupe Claridge et le groupe Paxport. Le conseil d'administration de la Pearson Development Corporation, qui fait fonction de comité de gestion pour les deux sociétés, Il se compose de huit personnes dont quatre sont nommées par chaque groupe. Les décisions du comité de gestion sont prises à la majorité, sauf dans un nombre limité de cas où il faut l'unanimité. Ses membres sont : Peter Coughlin, président; John Pitcher, président et directeur général; Norman Spencer, vice-président directeur; Peter Kozicz, premier vice-président; Boon Khaw, premier vice-président; Robert Vineberg, secrétaire; Robert Abrams, secrétaire adjoint; Richard Lacheik, directeur.

Annexe C - Notices biographiques sur les Accords sur l'aéroport Pearson

Pearson, William. Président d'Agra Industries.

Peat Marwick Thorne. Cabinet d'experts-comptables qui a fait une évaluation de la valeur du marché pour le gouvernement.

***Pigeon, Jacques.** Avocat-général, ministère de la Justice.

Ploder, George. Président, Bracknell Corporation.

***Power, Wayne.** Directeur de la transition, Aéroport international Pearson, Transports Canada

Price Waterhouse. A servi de consultant pour le processus d'évaluation — responsable de l'élaboration du processus, de la présentation, du secret de la Demande de propositions.

***Quail, Ranald.** Était sous-ministre associé de Transports Canada et pour une courte période avant l'arrivée de David Broadbent négociateur en chef des accords de l'aéroport Pearson.

Raymond, Chabot, Martin, Paré. Cabinet d'experts-conseils en gestion chargé de surveiller le processus d'évaluation.

Riopelle, Hugh. Lobbyiste pour Paxport. Ancien représentant des Relations publiques d'Air Canada.

***Rowat, Willam A.** A été muté du BCP au ministère des Transports comme sous-ministre associé juste avant le départ d'Huguette Labelle. A pris la relève de Dave Broadbent dans les négociations au nom de Transports Canada. Était négociateur en chef au moment de la conclusion des accords. Maintenant sous-ministre à Pêches et Océans.

***Shortliffe, Glen.** Sous-ministre des Transports de 1988 à 1990. Greffier du Conseil privé jusqu'en 1993.

***Simke, John.** Conseiller de Price Waterhouse, engagé par Transports Canada.

***Sinclair, Gordon.** Ancien président de l'Association du transport aérien du Canada.

***Spencer, Norman.** Vice-président de la Pearson Development Corporation.

***Stehelin, Paul.** Auteur de l'étude sur T1/T2 pour Deloitte & Touche.

Sunquest Vacations Limited. Plus grand forfaitiste indépendant au Canada. Tous ses circuits ont pour point d'arrivée et de départ l'aéroport international Lester B. Pearson.

***Swain, Harry.** Sous-ministre du ministère de l'Industrie.

Swirsky, Ben. Président et directeur général de Bramalea.

Torchinsky, Ben. Président d'Agra Industries, propriétaires d'Allders.

T1T2 Limited Partnership. Entrepreneur auprès du gouvernement fédéral pour le réaménagement de l'aéroport international Pearson. Les partenaires de T1/T2 sont le groupe Claridge, Agra Industries, Allders Canada Inc., la

Annexe C - Notices biographiques sur les Accords sur l'aéroport Pearson

Bracknell Corporation, Hartay Enterprises, la Lockheed Corporation, Matthews Group, Matthews Investment et NORR Group Consultants.

T3LPCO Investment Inc. Société de placements qui exploite l'aérogare 3 à l'aéroport Pearson. Dirigeants : Peter Coughlin, président; Norman Spencer, vice-président, Robert S. Vineberg, secrétaire; Robert J. Abrams, secrétaire adjoint.

***Vineberg, Robert.** Conseiller juridique, Pearson Development Corporation.

***Warrick, Ed.** Ancien directeur général, Grands projets de l'Etat, Aéroport Pearson.

Withers, Ramsay. Sous-ministre des Transports de 1983 à 1988. En 1992, il est devenu lobbyiste pour Claridge Properties.

Wood Gundy Capital. Actionnaire de Paxport. S'est retiré durant la phase d'évaluation.

Wright, Robert. Recruté pour examiner les réclamations par suite de l'annulation du contrat. Ancien associé de Jean Chrétien dans un cabinet d'avocat.

Young, Douglas. Ministre des Transports. A témoigné devant le Comité des transports de la Chambre des communes et le Comité sénatorial des affaires juridiques et constitutionnelles au sujet du projet de loi C-22.

*A comparu devant le Comité. Voir Annexe A

Le MARDI 17 octobre 1995

Le Comité spécial du Sénat sur les accords de l'aéroport Pearson a l'honneur de présenter son

DEUXIÈME RAPPORT

Le 4 mai 1995, conformément à une motion adoptée par le Sénat, le Comité a été créé pour «étudier tous les aspects inhérents aux politiques et aux négociations ayant mené aux accords relatifs au réaménagement et à l'exploitation des aéroports 1 et 2 de l'Aéroport international Lester B. Pearson, de même que les circonstances ayant entouré l'annulation des accords en question, ainsi qu'à faire rapport à ce sujet».

Afin de pouvoir exécuter son mandat, il est essentiel que le Comité ait accès aux présentations faites au Conseil du Trésor en août 1993 sur les accords de l'aéroport Pearson. Le Comité est d'avis que la transmission de ces documents sert l'intérêt public et constitue une exception justifiée à l'habituelle pratique concernant le respect du caractère confidentiel des affaires du Cabinet.

Par conséquent le Comité recommande qu'une adresse soit humblement présentée à Son Excellence le Gouverneur général pour qu'il autorise le dépôt au Sénat d'une copie des présentations faites au Conseil du Trésor en août 1993 concernant les accords de l'aéroport Pearson.

Respectueusement soumis,

Le président

FINLAY MACDONALD

Rapport rédigé par M. Robert Nixon à la demande du premier ministre Chrétien. Livré le 29 novembre 1993, il a été rendu public le 3 décembre 1993.

Au cours des 30 derniers jours, il m'a été donné d'examiner l'accord sur la privatisation et le réaménagement des aéroports 1 et 2 de l'aéroport Pearson de Toronto. J'ai demandé à des avocats et à des analystes commerciaux de scruter tous les documents contractuels constituant cet accord. J'ai demandé à des avocats et à des analystes commerciaux de scruter tous les documents contractuels constituant cet accord. J'ai en outre rencontré un certain nombre des personnes en cause afin de mieux comprendre ce document et les démarches dont il est l'aboutissement. Voici ce que j'ai appris.

1. LE PROCESSUS DE PRIVATISATION DES AÉROGARES 1 ET 2 DE L'AÉROPORT PEARSON

Le 8 avril 1987, le gouvernement du Canada publiait sa politique sur le futur cadre de gestion des aéroports au Canada. Cette politique et les principes qui s'y greffent gravitent principalement autour de la propriété et de l'exploitation des aéroports par des administrations locales. La question de la location par le secteur privé n'y est évoquée que brièvement comme possibilité à examiner.

Le 22 juin 1987, le gouvernement du Canada désignait *Airport Development Corporation* comme promotrice privilégiée chargée de construire et d'exploiter l'aérogare 3 à l'aéroport Pearson. Le groupe Matthews (*Matthews Group of Companies*) s'était vu écarter de la réalisation de ce projet.

En septembre 1989, ce groupe présentait au gouvernement du Canada, à l'égard de la privatisation des aéroports 1 et 2, une proposition spontanée qui fut rejetée.

Le 17 octobre 1990, le gouvernement annonçait que, par une demande de propositions, le secteur privé serait invité à participer à la modernisation de ces deux aéroports. Aucun détail n'avait alors été fourni.

Le 21 février 1991, l'aérogare 3 entrait en service. À ce moment-là, elle était sous le contrôle effectif de *Claridge Holdings Inc.* (Claridge).

Le 11 mars 1992, le gouvernement du Canada lançait une demande de propositions en vue de privatiser et de réaménager les aéroports 1 et 2 de Pearson. Plusieurs aspects de cette démarche méritent d'être mis en lumière. Tout d'abord, elle a précédé la décision touchant un projet d'expansion

du réseau de pistes de l'aéroport. Deuxièmement, elle ne comporte qu'une seule phase. L'appel d'offres concernant l'aérogare n° 3 en comportait deux : l'invitation des parties intéressées à soumissionner et la sélection d'un petit nombre d'entre elles, puis l'invitation à présenter des propositions détaillées. Troisièmement, la demande de propositions ne précisait pas beaucoup d'aspects fondamentaux de l'aménagement proposé et laissait plutôt à leurs auteurs le soin de définir eux-mêmes ces aspects. Ainsi, c'est eux qui devaient établir les projections touchant le trafic passagers à l'aéroport (données qui sont essentielles pour déterminer le rythme et l'ampleur du réaménagement). Enfin, le délai de présentation des propositions n'était que de 90 jours.

Deux offres seulement furent présentées, l'une par *Paxport Inc.*, que contrôlait le groupe Matthews, et l'autre par un groupe dans lequel Claridge détenait une participation majoritaire.

Le 7 décembre 1992, on annonçait que la proposition de *Paxport Inc.* avait été jugée la meilleure proposition globale. Cette société avait jusqu'au 15 février 1993 pour démontrer au gouvernement que sa proposition était financièrement viable. Comme elle n'a pu le faire ni, selon son président, se procurer les capitaux nécessaires auprès d'autres sources, elle a demandé l'appui financier de Claridge.

Le 1^{er} février 1993, *Paxport Inc.* et Clardige annonçaient la formation d'une entreprise en participation (donnant ainsi naissance à) destinée à réaliser le projet de réaménagement énoncé dans la proposition de *Paxport Inc.*

Entre ce jour-là et le mois de mai 1993, la nouvelle coentreprise entama des discussions avec le gouvernement du Canada au sujet de la viabilité financière du projet et d'autres questions cruciales comme le bail d'Air Canada.

En mai 1993, on avait suffisamment fouillé ces questions pour pouvoir entamer les négociations officielles. De plus, Claridge avait alors assumé le contrôle effectif de la coentreprise.

Le 18 juin 1993, les parties aux négociations, *Pearson Development Corporation* (au nom de *T1/T2 Limited Partnership*) et le gouvernement du Canada, signaient un protocole d'entente portant que les principales questions de fond touchant l'accord proposé avaient été cernées et y étaient énoncées de façon acceptable à leurs yeux. Il ne s'agissait pas d'une entente exécutoire, y mentionnait-on expressément.

Le 30 août 1993, le ministre des Transports annonçait qu'une entente générale avait été conclue avec *Pearson Development Corporation* en vue de réaménager et d'exploiter les aérogares 1 et 2, précisant qu'elle serait scellée à l'automne par la signature d'un accord juridique sur la gestion, l'exploitation et le réaménagement à long terme des aérogares.

Le 8 septembre 1993, le gouvernement du Canada déclenchait les élections. Au cours du mois, l'entente provisoire souleva la controverse dans les médias et dans la campagne électorale même.

Avant la signature de l'accord juridique, le chef de l'opposition (l'actuel Premier ministre) affirma clairement que, si les parties à cette transaction décidaient de la conclure, elles le feraient à leurs propres risques et que le futur gouvernement n'hésiterait pas à adopter une loi pour bloquer la privatisation des aéroports 1 et 2 si la transaction allait à l'encontre de l'intérêt public.

Par suite de cette déclaration et, peut-on supposer, parce qu'il se demandait s'il y avait lieu de conclure l'accord à ce moment-là, le négociateur en chef du gouvernement du Canada demanda qu'on lui confirme par écrit s'il devait procéder à cette transaction.

Le 7 octobre 1993, il reçut des directives écrites précisant que le Premier ministre avait demandé expressément que la transaction soit faite le jour même.

Ce jour-là fut donc conclu l'accord juridique prévoyant la privatisation et le réaménagement des aéroports 1 et 2.

2. L'ACCORD SUR LA PRIVATISATION DES AÉROGARES 1 ET 2 DE PEARSON

Cet accord est une transaction extrêmement complexe. Il comporte plus de vingt contrats, des ententes, des baux et des sous-baux distincts. Les deux principales ententes, outre le bail foncier, portent, l'une sur l'aménagement et l'autre sur la gestion et l'exploitation. Voici quelques-unes des grandes lignes de chacun de ces documents.

Le bail foncier

Les parties : Sa Majesté du chef du Canada, représentée par le ministre des Transports, loue à *T1/T2 Limited Partnership* (le locataire) le complexe des aéroports 1 et 2. La participation effective de *T1/T2 Limited Partnership* a été portée à la connaissance du gouvernement du Canada, mais non à celle du public, lorsque les documents relatifs à l'accord ont été partiellement divulgués au cours de la campagne électorale.

La durée : Le bail et le délai d'option ont une durée de 57 ans, indépendamment de tout aménagement au-delà de la phase 1B de l'entente d'aménagement. Cet aménagement est conditionnel à certains facteurs, dont le niveau du trafic passagers. Si ces facteurs ne se concrétisent pas, le bail se poursuit même s'il n'y a pas d'aménagement.

Le bail a une durée de 37 ans. Il est assorti d'une option permettant à une personne morale distincte (contrôlée par le locataire) de louer les mêmes installations pour une période supplémentaire

de 20 ans. L'objet explicite de ce partage est de soustraire le locataire au droit de cession immobilière de quelques 10 millions de dollars qu'il devrait verser à la province d'Ontario.

Le loyer ; Le montant du loyer annuel à verser au gouvernement du Canada les neuf premières années est de 27 millions de dollars au début pour passer à 30 millions. Par la suite, il est le plus élevé des deux montants suivants : 30 millions de dollars, avec rajustement tenant compte de l'inflation et du trafic passagers, ou un pourcentage du revenu brut.

Un montant de 33 millions de dollars du loyer est reporté pour les 2^e, 3^e et 4^e années du bail, le remboursement de ce montant devant comprendre les intérêts. Il en résulte que le loyer réel correspondant à ces années sera sensiblement inférieur aux recettes nettes de 26 millions de dollars que Transports Canada tirera de l'exploitation de ces installations au cours de l'exercice 1993.

Dans le calcul du revenu brut (qui servira à déterminer le loyer) entrent 10 déductions qui, m'informe-t-on, sont inhabituelles dans les transactions commerciales.

Société à but unique : Le bail n'empêche pas d'exercer des activités autres que la gestion, l'exploitation et l'entretien des aéroports 1 et 2. En conséquence, la ruine financière d'une entreprise tout à fait étrangère à ces activités pourrait mettre en péril la situation financière de *TI/T2 Limited Partnership*.

L'obligation d'entretenir et d'améliorer : L'obligation première du locataire est d'exploiter les aéroports 1 et 2 à titre d'"aéroports de première catégorie". Cette norme, que le locataire peut être tenu de respecter par le gouvernement du Canada, est la suivante : "les aéroports doivent répondre aux normes applicables à ce moment-là aux installations des grands aéroports internationaux et offrant des services de qualité supérieure au public et aux transporteurs aériens". Cette obligation est assujettie à la condition que le locataire puisse recouvrer ses frais, plus un pourcentage de ceux-ci tiré des revenus différentiels qui correspondent aux frais imposés aux occupants et aux usagers et qui émanent d'autres sources liées aux aéroports 1 et 2.

Le trafic cible de passagers : Le gouvernement du Canada s'engage à n'autoriser l'aménagement, dans un rayon de 75 km des aéroports 1 et 2, d'aucune installation aéroportuaire susceptible de réduire de plus de 1,5 million de passagers par année le trafic à Pearson, tant que ce trafic n'y aura pas atteint 33 millions de personnes par an, ce qui, d'après les dernières projections, devrait se produire vers l'an 2005. Si le gouvernement du Canada décide quand même de procéder à un tel aménagement, il devra ou bien compenser le locataire pour la perte que celui-ci en subira ou lui donner accès à la zone 4 de l'aéroport Pearson, qui était explicitement exclue de la demande de propositions.

Recours en cas d'inexécution : En cas d'inexécution, le gouvernement du Canada peut prendre possession des installations et les exploiter de manière à réparer la défaillance du locataire ou résilier le bail. Tels sont les deux principaux recours possibles.

L'hypothèque sur la propriété louée à bail : Le locataire a certains droits de contracter une hypothèque sur la propriété louée, auprès d'un ou de plusieurs établissements prêteurs. Si le créancier hypothécaire réalise la sûreté, il n'est pas tenu de terminer les phases suivantes de la construction, ni d'obtenir le consentement du gouvernement du Canada pour céder, louer ou sous-louer les installations.

L'entente d'aménagement

Les phases du projet : La phase 1A doit commencer dans les 30 jours de la date d'entrée en vigueur de la transaction et coûter 100 millions de dollars. La phase 1B doit, pour sa part, débuter dans les 19 mois de cette date et coûter 240 millions. Quant à la phase 2, elle ne devra commencer que lorsque le trafic passagers aura atteint 22,4 millions par année à l'aéroport Pearson. Elle doit coûter 200 millions de dollars. Les phases 3 et 4 doivent débuter lorsque ce trafic passera à 24,2 millions par année et elles coûteront 160 millions de dollars.

Inexécution par Air Canada/frais de supplément de service (FSS) : Si Air Canada devient incapable de payer son loyer au moment où le début d'une nouvelle phase est prévu et exigé par le gouvernement du Canada, *T1/T2 Limited Partnership* peut demander l'autorisation d'imposer des FSS (c.-à-d. de percevoir des droits des passagers) de manière à générer les revenus nécessaires à l'aménagement. Si le gouvernement du Canada ne l'y autorise pas, *T1/T2 Limited Partnership* n'est pas tenue de réaliser l'aménagement.

Aérogare 1 : *T1/T2 Limited Partnership* est tenue de maintenir l'aérogare 1 opérationnelle jusqu'au début des phases 3 et 4, ce qui devrait survenir en 1999. Si cela lui coûte plus de 15 millions de dollars en immobilisations, le gouvernement du Canada est tenu d'assumer le tiers du dépassement. Si les niveaux cibles de passagers fixés pour les phases 2, 3 et 4 sont atteints plus tard que prévu, il se pourrait que l'obligation de maintenir l'aérogare 1 opérationnelle se prolonge au-delà de 1999 et entraîne certains coûts pour le gouvernement du Canada. Aucun paiement de sa part n'est prévu dans la demande de propositions.

Transactions sans concurrence : Vers la fin de septembre 1993, *T1/T2 Limited Partnership* a fait valoir auprès du gouvernement qu'elle avait passé avec des parties non indépendantes, avant le 7 octobre 1993, dix contrats dont l'un était apparemment une entente de pilotage conclue avec *Matthews Construction*. Cette information n'a pas été rendue publique. Le gouvernement a le droit de prendre connaissance de tels contrats, mais ce droit s'arrête là. Il n'a pas tenté d'exercer ce droit limité à l'égard de l'entente susmentionnée. Il y a quelque temps, *T1/T2 Limited Partnership* a fait savoir que le projet de construction fera en fait l'objet d'un appel d'offres.

Pour ce qui est des contrats ultérieurs au 7 octobre 1993, le gouvernement du Canada n'a pas le droit de s'y opposer; il ne peut qu'exiger, une fois ceux-ci passés, qu'ils aient une juste valeur marchande.

L'entente sur la gestion et l'exploitation

Prix imposés aux sociétés aériennes : Le locataire accepte de ne pas imposer, pour l'utilisation des aérogares 1 et 2 par les transporteurs aériens, de droits et de frais dérogeant à la politique qui est convenue en matière de prix et qui limite essentiellement ceux-ci aux prix coûtants majorés d'un bénéfice. De toute évidence, il en coûtera désormais beaucoup plus cher aux transporteurs aériens pour utiliser ces aérogares.

Politique des prix de détail : Le bail de concession ordinaire prescrira que les sous-locataires n'auront pas le droit de pratiquer des prix dépassant de plus de 15 p. 100 ceux exigés en moyenne pour un produit comparable au centre-ville de Toronto.

Politique des droits de stationnement : Les droits exigés dans les stationnements publics des aérogares 1 et 2 ne dépasseront pas le plafond établi à partir de ceux pratiqués dans au moins dix des grands stationnements du centre-ville torontois. Actuellement, ils sont sensiblement inférieurs à ce plafond.

3. OBSERVATIONS ET AVIS CONCERNANT LE PROCESSUS

La privatisation de l'aérogare 3 de l'aéroport Pearson ayant été autorisée, le processus de privatisation des aérogares 1 et 2, qui sont les installations restantes du plus grand aéroport canadien, déroge à l'orientation principale de la politique annoncée par le gouvernement du Canada en 1987.

Comme la demande de propositions ne comportait qu'une seule phase et obligeait leurs auteurs à entreprendre la définition de projet et à présenter leurs offres, le tout dans un délai de 90 jours, l'un d'entre eux s'est trouvé fortement avantage, à mon avis, du fait qu'il avait déjà fait une proposition pour la privatisation et l'aménagement des aérogares 1 et 2. Les autres sociétés de gestion et de construction qui n'avaient pas trempé dans le magouillage antérieur à la demande de propositions n'avaient aucune chance de faire assez vite pour préparer leur offre dans le bref délai imparti. Comme les projets de construction et d'aménagement se faisaient rares, d'autres sociétés auraient dû être invitées à présenter des propositions et se voir accorder à cette fin un délai raisonnable.

De plus, il est important de noter qu'aucune analyse financière préalable n'était exigée dans cette demande de propositions. Il me semble fort peu habituel et malavisé que, pour un projet de cette envergure, la "meilleure proposition globale" ait été choisie sans qu'on soit absolument sûr de sa viabilité financière.

Enfin, la conclusion de cette transaction sur l'ordre du Premier ministre en pleine campagne électorale, à un moment où cette affaire soulevait une controverse, bat en brèche, à mon sens, les usages démocratiques normaux et dignes de ce nom. Il est de tradition notoire et respectée jalousement par les gouvernements que, lorsqu'ils dissolvent le Parlement, ils doivent exercer un

pouvoir de décision restreint en période électorale. Il ne fait aucun doute qu'une transaction financière d'une telle envergure, qui devait privatiser pour 57 ans un bien public d'importance, n'aurait pas dû être conclue à ce moment-là.

En résumé, je suis d'avis que le processus de privatisation et de réaménagement des aéroports 1 et 2 de Pearson est très loin de favoriser au plus haut point l'intérêt public.

4. LA DIMENSION POLITIQUE DU PROCESSUS

La controverse publique qu'a soulevée l'attribution de ce contrat oblige à examiner la dimension politique du processus.

Le rôle joué par le favoritisme : Donald Matthews, mandant de *Paxport Inc.*, était président de la campagne d'investiture de M. Mulroney en 1983 et du Parti progressiste-conservateur, ainsi que principal responsable du financement de ce parti. Otto Jelinek, ministre au sein de l'ex-gouvernement progressiste-conservateur, ne s'est pas représenté comme candidat aux élections et siège maintenant au conseil d'administration de *Paxport Inc.*, en plus d'occuper la présidence de la filiale asiatique de cette société. Ces faits, combinés au processus boiteux décrit plus haut, amènent naturellement à soupçonner que le favoritisme n'est pas étranger au choix de *Paxport Inc.*

Le rôle des groupes de pression et du personnel politique : Les groupes de pression, cela ne laisse aucun doute, ont joué un rôle déterminant en vue d'infléchir les décisions prises à ce moment-là, débordant largement le principe acceptable de la "consultation". Lorsque les bureaucrates supérieurs qui représentent le gouvernement du Canada dans des négociations estiment que ces groupes influencent leurs actes et leurs décisions au point où ceux-ci l'ont fait dans cette affaire, le rôle de ces groupes dépasse, à mon avis, les limites permises. De plus, le personnel politique a donné l'impression que cette transaction l'intéressait de manière fort peu commune. En fait, les pressions qui entouraient ce dossier ont entraîné la réaffectation de plusieurs fonctionnaires et en ont poussé d'autres à faire eux-mêmes une demande en ce sens.

Le rôle de la concurrence Rappelons ici la mention implicite, dans la demande de propositions, du fait qu'une concurrence était souhaitable entre le preneur à bail des aéroports 1 et 2 et Claridge, locataire de l'aéroport 3. De plus, *Paxport Inc.* misait beaucoup sur sa situation concurrentielle à l'égard de cette aéroport dans sa proposition, retenue comme la "meilleure proposition globale". Cependant, après avoir remporté cette lutte, elle n'aurait pu procéder qu'une fois que Claridge aurait assumé la responsabilité financière du projet. En fait, cette dernière société, dont la proposition procurait un rendement plus faible au gouvernement du Canada et réduisait les coûts d'Air Canada, se vit forcée, après avoir vu son offre écartée, d'accepter une situation moins avantageuse pour ne pas perdre celle de Paxport. Là encore, il semble que cette dernière ait été l'objet de faveurs inexplicables du fait que sa proposition a été retenue en dépit de la concurrence amoindrie.

Le rôle de l'administration aéroportuaire locale : Le principe de l'administration aéroportuaire locale a été appliqué à Vancouver, à Calgary, à Edmonton et à Montréal. La collectivité de l'aéroport Pearson, le gouvernement provincial, les municipalités de la région et les organismes de gens d'affaires s'attendaient qu'une politique semblable soit suivie. Le ministre des Transports refusa plutôt de reconnaître l'administration locale constituée par les chambres de commerce et appuyée par les municipalités avoisinantes et les régions. Ce refus catégorique était motivé par ce que j'estime être une rivalité limitée et normale entre municipalités. Il ne faut donc pas s'étonner qu'on ait eu l'impression que l'inflexibilité du gouvernement à ne pas reconnaître une administration aéroportuaire locale visait simplement à éliminer tout risque que ce projet échappe à *Paxport Inc.*

5. COMMENTAIRES ET OPINION SUR L'ACCORD

D'après une étude de Transports Canada datant de 1987, l'aéroport Pearson a des retombées économiques directes de 4 milliards \$ pour l'économie de l'Ontario et a donné directement ou indirectement de l'emploi à plus de 56 000 ontariens. Il représente à tous points de vue plus que la somme de ses parties ou que le total de ses actifs et de ses passifs. C'est un point d'entrée national extrêmement important et un point de service central pour les voyageurs, les familles et les expéditeurs. Aucune autre installation ne peut l'égaliser dans la région, voire dans toute la province ou n'importe où ailleurs au pays. Cette combinaison de son importance économique et sociale pour la région, la province et le pays, et le fait qu'il s'agit d'un service unique pour lequel il n'existe pas de substitut, font que cet aéroport, à mon avis, est plus qu'une simple installation de transport; il m'apparaît en fait comme un des plus importants biens publics dans l'économie du sud de l'Ontario et de l'ensemble du pays.

L'aérogare 3 sera louée à des intérêts privés et exploitée par ceux-ci pendant encore 57 ans. Envisager la privatisation des deux autres aérogares serait, à mon avis, contraire à l'intérêt public. Ce n'est qu'en s'assurant que le réaménagement et l'exploitation des aérogares 1 et 2 soient entre les mains d'un organisme fortement soucieux de l'intérêt public général que le gouvernement du Canada pourra s'acquitter correctement de son obligation envers la région, la province et le pays.

L'Accord propose de céder la gestion de ce bien à *T1/T2 Limited Partnership* pendant une période de 57 ans. La durée de cet accord de location est difficile à concevoir. Les exigences de remboursement du capital seront satisfaites longtemps avant l'expiration du bail. De la façon dont la technologie évolue, il est inévitable que les transports s'effectueront de façon bien différente dans 57 ans d'ici. Il suffit de comparer les moyens de transport d'aujourd'hui à ceux de 1935. S'agissant de quelque chose d'aussi sujet à l'évolution technologique qu'un aéroport, il m'apparaît que la durée de cette obligation ne sert pas l'intérêt public.

La source de revenus que l'Accord procure au gouvernement du Canada est loin d'être énorme. Dans l'immédiat, les frais de location perçus seront moindres qu'au cours des dernières années. À mesure que les années s'écouleront, les revenus de location dépendront largement d'une

tarification agressive qui se fera essentiellement sans contrôle gouvernemental et au risque de rendre l'aéroport Pearson incapable de soutenir la concurrence d'aéroports rivaux au Canada et aux États-Unis.

D'autre part, comme m'en a informé mon conseiller en évaluation d'entreprises, le taux de rendement accordé à *T1/T2 Limited Partnership* pourrait bien, vu la nature de la transaction, être jugé excessif.

La non-divulgaration de l'identité complète des parties à cet accord et d'autres importantes dispositions du contrat éveillent inévitablement la méfiance du public. À mon avis, quand le gouvernement du Canada propose de privatiser un bien public, la transparence devrait être de mise. Le public devrait avoir le droit de connaître tous les détails de l'accord.

L'accord contient une clause restrictive concernant l'aménagement d'autres installations aéroportuaires dans un rayon de 75 km de l'aéroport Pearson. Cela pourrait bien empêcher la réalisation d'initiatives souhaitables de la part du gouvernement aux aéroports du sud de l'Ontario qui, pour les fins de planifications, doivent tous être considérés comme faisant partie d'un seul et unique système. De plus, la restriction est relativement absolue jusqu'à ce que le nombre de passagers transitant par l'aéroport Pearson s'élève à 33 millions par année, ce qui élimine toute possibilité pour le gouvernement fédéral d'atténuer les pressions créées par l'augmentation de la clientèle jusqu'à ce que ce chiffre soit atteint.

Selon une opinion énoncée dans la présentation au Conseil du Trésor, le besoin d'atténuer cette pression commencera à se faire sentir au moment où le chiffre de 30 millions de passagers par année serait atteint. Non seulement cette restriction empêchera-t-elle des interventions qui pourraient être souhaitables, mais elle pourrait bien aussi rendre inévitable une augmentation excessive de l'achalandage à l'aéroport Pearson.

L'Accord ne comporte que de légères restrictions en ce qui concerne les transactions entre les partenaires eux-mêmes. Il ne permet aucunement de modifier les contrats avec lien de dépendance conclus avant le 7 octobre 1993. Pour les contrats conclus après cette date, le gouvernement du Canada n'a aucun droit de veto préalable; il a seulement le droit de porter plainte après le fait.

Les obligations de rendement de *T1/T2 Limited Partnership* sont, peut-être par la force des choses, formulées en termes généraux. L'obligation de maintenir en service et d'exploiter une aérogare de première classe est nécessairement générale. Il sera inévitablement difficile pour le gouvernement du Canada de déterminer quand il y aura eu manquement à cette obligation. De plus, les principales mesures correctives auxquelles le gouvernement pourra ensuite recourir seront soit d'annuler complètement le bail foncier soit d'exploiter lui-même l'aéroport, deux mesures draconiennes qu'il est peu probable, à mon avis, que le gouvernement prenne un jour.

Enfin, cet accord a une valeur de précédent très désavantageuse pour le gouvernement du Canada au niveau de ses rapports avec les administrations aéroportuaires locales qui, partout au pays, exploitent actuellement un certain nombre de grands aéroports à des conditions beaucoup plus favorables pour le gouvernement du Canada que ne l'est cet accord. D'après moi, il s'ensuivra de fortes pressions sur le gouvernement fédéral pour qu'il modifie ses relations avec ces administrations aéroportuaires locales de manière à leur accorder un traitement aussi favorable.

Bref, tout compte fait, il m'apparaît que cet accord ne sert tout simplement pas l'intérêt public.

6 CONCLUSION

Mon examen m'a mené à une seule conclusion. Valider un contrat inadéquat comme celui-là, qui a été conclu de façon si irrégulière et, possiblement, après manipulation politique, serait inacceptable. Je vous recommande donc de l'annuler.

7. L'AVENIR

Bien que l'accord ne contienne aucune clause d'annulation formelle, j'estime, si vous êtes d'accord avec ma recommandation, qu'il serait raisonnable que vos représentants communiquent avec les mandants de *T1/T2 Limited Partnership* pour les informer de votre décision, à laquelle il sera donné suite par voie de négociation ou en saisissant le Parlement de l'affaire. Je suis sûr que la première avenue mènera à un dénouement raisonnable. Les hauts dirigeants de *T1/T2 Limited Partnership* sont des gens d'affaires responsables et professionnels.

À mon avis, il serait nécessaire et, en fait, souhaitable, d'accorder une compensation raisonnable. Je suggérerais que cette compensation inclue les dépenses engagées jusqu'ici par *T1/T2 Limited Partnership*. Il ne serait pas nécessaire, à mon avis, d'inclure dans les négociations à ce sujet une compensation pour perte d'occasions d'affaires ou pour renonciation à des profits. Étant donné les circonstances entourant cette malheureuse transaction, et comme elle est encore toute récente, il n'y a aucune raison impérieuse d'accorder ce genre de compensation.

Je recommande que le ministère fédéral des Transports continue pour le moment d'administrer les aérogares 1 et 2 et qu'il procède aux travaux de construction nécessaires. Ensuite, je recommande qu'il reconnaisse une administration aéroportuaire qui, une fois prête à fonctionner, se verrait confier la responsabilité des opérations quotidiennes du complexe aéroportuaire. Elle s'occuperait aussi de la planification, du financement et de la construction d'infrastructures aéroportuaires. Cela comprendrait en particulier les aérogares 1 et 2 et les pistes, voies de circulation et aires de trafic à l'aéroport Pearson.

L'aérogare 3 demeurerait entre les mains d'intérêts privés.

L'administration aéroportuaire que je recommande est une extension d'un concept qui a déjà cours ailleurs. Étant donné la taille de l'aéroport Pearson et son importance pour la région de Toronto, la province de l'Ontario et le Canada tout entier, je considère que les gouvernements provincial et fédéral devraient être directement représentés au sein de cette administration. L'actuelle *Greater Toronto Region Airport Authority* représente déjà les gens d'affaires et l'ensemble de la population des cinq régions. Les cinq postes actuellement vacants au conseil d'administration de cette administration devraient, à mon avis, être occupés par deux membres nommés par le ministre des Transports de l'Ontario et trois membres, y compris le président, nommés par le ministre fédéral des Transports. Ces membres ne devraient être ni des représentants élus ni des fonctionnaires et devraient s'acquitter de leurs fonctions dans le meilleur intérêt de l'administration aéroportuaire.

Ce genre d'administration répond à mon avis au besoin de sensibilisation à l'intérêt public général qui entre en ligne de compte dans l'aménagement et l'exploitation de l'aéroport Pearson. De plus, comme ce fut le cas à d'autres aéroports canadiens, ce genre d'administration aurait un accès raisonnable à des capitaux, indépendamment de toute garantie gouvernementale.

Des examens approfondis ont mis en évidence le besoin de coordonner la gestion des installations aéroportuaires dans cette région du centre-sud de l'Ontario. L'administration devrait être autorisée à négocier l'inclusion de ces installations dans son mandat. En acceptant de reconnaître son autorité en matière de planification, ces installations bénéficieront d'un soutien en capital et opérationnel découlant de la responsabilité de l'administration d'assurer la planification et l'amélioration de l'ensemble du système.

Le complexe constitué par les aérogares 1 et 2 est le coeur de l'aéroport Pearson. L'exploitation et le réaménagement futurs de ces aérogares doivent se faire dans l'intérêt public. À mon avis, le présent accord ne le permet pas. Je suis sûr qu'il sera possible de le faire à l'avenir.

**EXAMEN DE L'AÉROPORT PEARSON :
DES REPRÉSENTANTS DES ORGANISATIONS
SUIVANTES ONT ÉTÉ CONSULTÉS**

AIR CANADA
AIR TRANSAT
BRITISH AIRPORTS AUTHORITY
BUTTONVILLE AIRPORT
CANADA AIRPORTS LTD.
CANADA 3000
VILLE DE MISSISSAUGA
VILLE DE BRAMPTON
VILLE DE HAMILTON
VILLE DE TORONTO
CLARIDGE
COUNCIL OF CONCERNED RESIDENTS
DELTA AIRLINES
GOUVERNEMENT DE L'ONTARIO
PRÉSIDENTS RÉGIONAUX DE LA RÉGION MÉTROPOLITAINE DE TORONTO
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Thirty-fifth Parliament, 1994-96

Première session de la
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SENATE OF CANADA

SÉNAT DU CANADA

Special Senate Committee on the

Comité sénatorial spécial sur les

Pearson Airport Agreements

Accords de l'aéroport Pearson

Chairman:
The Honourable FINLAY MACDONALD

Président:
L'honorable FINLAY MACDONALD

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(Issues Nos. 1 to 31 inclusive)

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